



STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD
UNFAIR PRACTICE CHARGE

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2019 MAR 25 PM 12:42
Date Filed: 3/25/19

DO NOT WRITE IN THIS SPACE:

Case No:

SF-PE-6-H

INSTRUCTIONS: File the original and one copy of this charge form in the appropriate PERB regional office (see PERB Regulation 32075), with proof of service attached to each copy. Proper filing includes concurrent service and proof of service of the charge as required by PERB Regulation 32615(c). All forms are available from the regional offices or PERB's website at www.perb.ca.gov. If more space is needed for any item on this form, attach additional sheets and number items.

IS THIS AN AMENDED CHARGE?

YES

If so, Case No.

NO

☒

1. CHARGING PARTY:

EMPLOYEE

EMPLOYEE ORGANIZATION

☒

EMPLOYER

☐

PUBLIC¹

☐

a. Full name:

American Federation of State, County and Municipal Employees - Local 3299

b. Mailing address:

Leonard Carder LLP, 1330 Broadway, Suite 1450
Oakland, CA 94612

c. Telephone number:

(510) 272-0169

d. Name and title of
person filing charge:

Andrew Ziaja, Attorney

E-mail Address: aziaja@leonardcarder.com

Telephone number:

(510) 272-0169

Fax No.: (510) 272-0174

e. Bargaining unit(s)
involved:

SX, EX

2. CHARGE FILED AGAINST: (mark one only)

EMPLOYEE ORGANIZATION

☐

EMPLOYER

☒

a. Full name:

Regents of the University of California

b. Mailing address:

Office of the General Counsel, University of California Office of the President, 1111 Franklin St., 8th Fl.,
Oakland, CA 94607

c. Telephone number:

(510) 987-9800

d. Name and title of
agent to contact:

Allison Woodall, Deputy General Counsel, Employment
& Legislative Affairs

E-mail Address: allison.woodall@ucop.edu

Telephone number:

(510) 987-0412

Fax No.: (510) 987-9757

3. NAME OF EMPLOYER (Complete this section only if the charge is filed against an employee organization.)

a. Full name:

b. Mailing address:

4. APPOINTING POWER: (Complete this section only if the employer is the State of California. See Gov. Code, § 18524.)

a. Full name:

b. Mailing address:

c. Agent:

¹ An affected member of the public may only file a charge relating to an alleged public notice violation, pursuant to Government Code section 3523, 3547, 3547.5, or 3595, or Public Utilities Code section 99569.

5. GRIEVANCE PROCEDURE

Are the parties covered by an agreement containing a grievance procedure which ends in binding arbitration?

Yes ☐ No ☒

6. STATEMENT OF CHARGE

- a. The charging party hereby alleges that the above-named respondent is under the jurisdiction of: (check one)
- ☐ Educational Employment Relations Act (EERA) (Gov. Code, § 3540 et seq.)
- ☐ Ralph C. Dills Act (Gov. Code, § 3512 et seq.)
- ☒ Higher Education Employer-Employee Relations Act (HEERA) (Gov. Code, § 3560 et seq.)
- ☐ Meyers-Milias-Brown Act (MMBA) (Gov. Code, § 3500 et seq.)
- ☐ Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (TEERA) (Pub. Utilities Code, § 99560 et seq.)
- ☐ Trial Court Employment Protection and Governance Act (Trial Court Act) (Article 3; Gov. Code, § 71630 – 71639.5)
- ☐ Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act) (Gov. Code, § 71800 et seq.)
- b. The specific Government or Public Utilities Code section(s), or PERB regulation section(s) alleged to have been violated is/are:
Gov. Code § 3571(a), (b), (c); Gov. Code § 3550; Gov. Code §§ 3550, 3553; Gov. Code § 1157.12
- c. For MMBA, Trial Court Act and Court Interpreter Act cases, if applicable, the specific local rule(s) alleged to have been violated is/are *(a copy of the applicable local rule(s) MUST be attached to the charge)*:
- d. Provide a clear and concise statement of the conduct alleged to constitute an unfair practice including, where known, the time and place of each instance of respondent's conduct, and the name and capacity of each person involved. This must be a statement of the facts that support your claim and *not conclusions of law*. A statement of the remedy sought must also be provided. *(Use and attach additional sheets of paper if necessary.)*
- See Attachment

DECLARATION

I declare under penalty of perjury that I have read the above charge and that the statements herein are true and complete to the best of my knowledge and belief and that this declaration was executed on March 25, 2019

(Date)

at Oakland, CA

(City and State)

Andrew J. Ziaja

(Type or Print Name)

(Signature)

Title, if any: Attorney

Mailing address: Leonard Carder LLP, 1330 Broadway, Suite 1450, Oakland, CA 94612

Telephone Number: (510) 272-0169 E-Mail Address: aziaja@leonardcarder.com

PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Alameda,
State of California. I am over the age of 18 years. The name and address of my
residence or business is Leonard Carder, LLP, 1330 Broadway, Suite 1450,
Oakland, CA 94612.

On March 25, 2019, I served the Unfair Practice Charge
(Date) (Description of document(s))

(Description of document(s) continued)

on the parties listed below (include name, address and, where applicable, fax number) by (check
the applicable method or methods):

X placing a true copy thereof enclosed in a sealed envelope for collection and delivery
by the United States Postal Service or private delivery service following ordinary business
practices with postage or other costs prepaid;

 personal delivery;

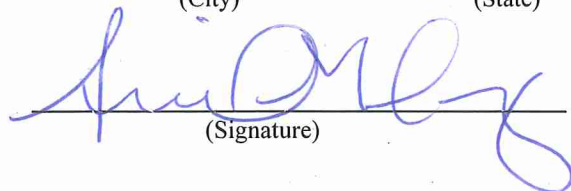
 facsimile transmission in accordance with the requirements of PERB Regulations
32090 and 32135(d).

(Include here the name, address and, where applicable, fax number of the Respondent and any other parties served.)

Allison Woodall, Attorney
Deputy General Counsel
UC General Counsel Office
1111 Franklin Street
Oakland, CA 94607

I declare under penalty of perjury that the foregoing is true and correct and that this
declaration was executed on March 25, 2019, at Oakland CA.
(Date) (City) (State)

Ariel M. Lopez
(Type or print name)


(Signature)

Attachment to Unfair Practice Charge

I. Introduction

Charging Party American Federation of State, County and Municipal Employees, Local 3299 (“AFSCME” or “the Union”) brings this charge against Respondent Regents of the University of California (“UC” or “the University”). This charge arises from the University’s communications and conduct interfering with bargaining unit members’ rights to participate in lawful strike activity, as well as to join, support, or remain members of AFSCME. The University’s actions violate HEERA, Gov. Code §§ 3571(a), (b), and (c) by interfering with protected activity, denying AFSCME rights guaranteed to it under HEERA, and failing and refusing to bargain over and provide information regarding mandatory subjects. UC’s conduct also violated Gov. Code §§ 3550 and 3553 by distributing unlawful communications that attempt to deter and discourage employees from remaining members in and/or supporting AFSCME, and Gov. Code § 1157.12 by directing employees with membership questions to management rather than AFSCME.

II. Statement of Facts

This charge emerges out of UC’s conduct surrounding the October 2018 economic strike by the EX Unit and the March 2019 strike in sympathy with UPTE-Local 9119. UC has made numerous efforts to interfere with AFSCME’s ability to strike, to silence its voice, and to diminish its ranks.

Foremost among the many instances of interference set forth below is a violent physical attack by a UC supervisor against AFSCME picketers during the October 2018 strike. On October 25, a UC supervisor used his pickup truck, his bare hands, and whatever he could grab as weapons to threaten, shove, strike, and choke AFSCME members and staff, who were peacefully picketing along with students at 6:30 in the morning on UC Davis’s campus. That supervisor, who is white, has been seen on campus after the attack and was only placed on administrative leave after video surfaced showing his attack on peaceful picketers. UC Davis has yet to condemn his actions, refuses to provide the union with information about his whereabouts or about what steps, if any, have been taken to ensure the safety of union members, staff and allied students. UC Davis’s refusal to provide information about his presence on campus—or even to clearly condemn his actions—gives the impression of impunity. UC Davis has done nothing public to allay [REDACTED] victims and AFSCME’s bargaining-unit members and staff, who continue to legitimately fear for their safety. AFSCME members and staff of color have gotten the message that they are not even physically safe in exercising their HEERA rights.

At the same time as UC has sought to instill fear among AFSCME members in exercising their HEERA rights, it has rewarded employees for crossing union picket lines. During the October 2018 and March 2019 strikes, management at worksites across the UC system bought lunch for employees who crossed picket lines and hosted parties and other social events during strike days in place of work. One campus held a pool party for staff who crossed the picket line and clocked in before the festivities. Crossing the picket line for many workers thus meant a free lunch or a pool party. With the threat of violence on one side and free food and a pool party on

the other, UC's strategy to suppress the voice of AFSCME members and the exercise of their HEERA rights is obvious.

UC has taken numerous other actions to silence AFSCME members, as well. These actions come as UC has increasingly shown a complete disregard for new legislation, overtly declaring itself to be above the law.

A. During the October 2018 Strike, UC Davis Manager Physically Attacked AFSCME Members and Staff On the Picket Line, and UC Will Not Respond to AFSCME's Inquiries As to His Continued Presence on Campus

During the strike on October 25, 2018, a group of approximately 16 students and workers were violently attacked by UC Davis Assistant Superintendent of Solid Waste [REDACTED]. At approximately 6:30 am, [REDACTED] drove his truck aggressively up to the edge of the workers and students, who were peacefully picketing in support of AFSCME 3299's three-day PCT strike at the intersection outside of Tercero Dining Commons. He sped toward the group only to slam on the brakes at the last moment, forcing some members of the group to run out of the way to avoid being hit. [REDACTED] stopped the truck in the middle of the group, exited his vehicle wearing a UC Davis Facilities shirt, and began aggressively yelling and pushing workers and students. At one point during the encounter, he approached an AFSCME staff member and grabbed her around the neck. [REDACTED] pushed, shoved, and hit other individuals. He then got back into his pickup truck, aimed it carefully, and again drove aggressively towards the middle of the crowd. [REDACTED] again slammed on the brakes, got out of his car, and picked up the handle of a picket sign as if to use it as a weapon. After swinging the handle of the picket sign like a baseball bat, he threw the handle to the ground and got back into his car. He then reversed and drove away.

UC Police took a report of the incident but the Campus did nothing at all to condemn [REDACTED] violence nor to remove him from campus. Instead, [REDACTED] initially returned to work after the incident as though nothing had happened. He continued to work until approximately mid-December, when a video of the attack posted online by student victims finally motivated the Campus to place him on administrative leave to investigate his conduct.¹ The Yolo County District Attorney's office initiated a criminal investigation.

UC told AFSCME that it would keep it informed as to the status of its investigation and [REDACTED] status on campus, but it has not. UC has not informed AFSCME as to whether the Campus has returned [REDACTED] to work, whether he has been disciplined or whether the Campus has concluded its investigation. UC Davis's silence gives AFSCME the impression that [REDACTED] suffered no consequences for his violent conduct. AFSCME likewise is not aware of any measures put in place by UC to insulate [REDACTED] from AFSCME members or staff. UC has done nothing that AFSCME is aware of to ensure that he will not engage in similar confrontations again, and done nothing to ensure the safety of AFSCME members and staff. UC has not even made a single public statement condemning [REDACTED]'s acts of violence against AFSCME members and staff, as well as students. To the best of the Union's knowledge, the University has not even admonished its supervisory and managerial staff to honor workers' rights to strike and engage in protest activity.

¹ A copy of that video can be seen here: <https://www.facebook.com/davisusas/videos/375011449735450/>

UC's apparent lack of concern for ██████'s violence contrasts appallingly with the treatment AFSCME members have received at the hands of UC Police. At a demonstration at UC Berkeley in February 2018, AFSCME member and UC Berkeley cook ██████, who is African American, was brutally thrown to the ground by two white police officers. Dozens of AFSCME demonstrators and supporters witnessed the UC Police's treatment of ██████ who was visibly terrified in a video recording of the event that played widely in the media.² Demonstrators holding placards bearing the image of Dr. Martin Luther King chanted "Brutality!" as a third white police officer piled on top of ██████—his glasses knocked from his face and laying on the pavement. Why did ██████ receive this treatment? ██████ was the only African American male among many other demonstrators who were caught close by an angry white driver attempting to accelerate his car through the crowd. UC Police pressed charges against ██████, which were dropped only after his case drew attention from numerous national political figures. ██████'s civil rights suit is currently pending.³

██████ used his full-size pickup truck as a weapon—chilling in light of recent history—to threaten AFSCME members and supporters who were peacefully demonstrating at 6:30 in the morning. Under no threat of harm to his person whatsoever, ██████ then exited his vehicle to follow through on his threats with his fists. Despite knowledge of his actions, UC Davis took no action against him until publically shamed into placing him on administrative leave pending the results of an investigation about which the University is resolutely silent. Meanwhile, ██████ was nearly hit by an angry white driver, who also used his car to intimidate demonstrators by dangerously plowing through the crowd. ██████ was thrown to the ground by UC Police and even faced criminal charges until they were dropped on the eve of trial.

AFSCME members have gotten the message. At UC, Union activists of color face heightened risks to their physical safety on the picket line. UC's high-visibility disparate treatment of ██████ and ██████ generates a climate of racial intimidation against AFSCME members of color, who must ask themselves before exercising their HEERA rights to strike and picket, "Will I be assaulted? If so, will UC care?"

B. Preceding and During the March 20 Sympathy Strike, UC Engaged in a Campaign of Unlawful Communications Aimed at Silencing AFSCME Members' Voice and Discouraging Them From Being Union Members

On March 20, 2019, the AFSCME-represented SX and EX Units engaged in a lawful systemwide sympathy strike. The SX and EX Units struck in sympathy with the systemwide post-impatse economic strike by UPTE-represented members of the TX, RX, and HX Units. The

² A video of the incident can be seen here:

https://www.facebook.com/Afscme3299/videos/10213167265630118/?comment_id=10213182590373227¬if_id=1517950960561695¬if_t=feedback_reaction_generic&ref=notif

³ Despite ██████'s constant presence at AFSCME demonstrations over many years—one of AFSCME's most dependable members at UC Berkeley—he has not been on an AFSCME picket line since his unjust treatment at the hands of UC Police. His presence has been missed, but his absence understandable given his ordeal.

strike proceeded at all ten campuses and five medical centers of the University of California, without any disruption to patient safety at the medical centers. The strikes, in fact, were a success for the UC community, drawing positive national media coverage and praise from a major U.S. presidential campaign.

Despite having been such a positive expression of solidarity within the UC community, both in the lead up and during the strike, UC Labor Relations, supervisors, and managers engaged in tactics aimed at interfering with employee rights. AFSCME-represented employees were bombarded with communications from UC Labor Relations—both systemwide and at the campus/medical center level—that were rife with misleading statements and outright falsehoods. UC’s strike communications blatantly intended to spread fear and coerce employees into refraining from exercising their HEERA-protected rights. UC’s strike communications went even further, attempting to encourage employees to drop their union membership.

1. Letter From Dwaine Duckett, Vice President, UC Systemwide Human Resources, to All AFSCME and UPTE Represented Employees

On March 14, 2019, UC Systemwide Vice President for Human Resources, Dwaine Duckett distributed a letter to all AFSCME and UPTE represented employees in the UC system. (Exhibit A.) Employees received this letter at UCLA Medical Center and elsewhere on that same date.

Duckett’s inflammatory letter deliberately intended to intimidate and mislead as many AFSCME and UPTE bargaining unit members as possible into refraining from the strike. He wrote,

Striking is serious, and impacts the critical services and care we know you take great pride in delivering to the people who depend on you. We believe it is highly inappropriate for any union to threaten services to patients, students and the public as a negotiating tactic.

[. . .]

As it has before, UC will seek legal protection for patients against a strike due to the imminent threat it poses to public health and safety. We will let you know if your position is among those that are barred from striking.

(*Ibid.*) Duckett’s letter is riddled with falsehoods.

AFSCME and UPTE took great pains to ensure that the exercise of their bargaining unit members’ right to strike would in no way harm patient care. The two unions gave an unprecedented 12 days’ advance notice – despite being under no legal obligation to do so – and also exempted various employees from the scope of the strike to ensure minimum staffing comparable to weekends and holidays in specified roles at *each* UC medical center. Both unions also volunteered to provide stop-gap staffing to cover shortfalls through their Patient Protection Task Forces. The Unions’ efforts to ensure minimum staffing in specified positions were so

precise, in fact, that PERB only sought to have 29 AFSCME positions enjoined with 24 of those to be “on call” if necessary. (Exhibit B.) PERB sought to enjoin a mere 5 UPTE positions, 3 of which it designated as on-call rather than barred from striking altogether. (*Ibid.*) PERB agreed that in light of the unions’ actions and the wide array of contingency measures available to the University there was no threat to patient care.

The coercion in Duckett’s letter is blunt and heavy-handed—all the more against the background of these untruths. He said, “We will let you know if your position is among those that are barred from striking.” (Exhibit A.) For an ordinary reader, this would beg the obvious questions: Was anyone barred, and by whom?

The answer, of course, is PERB and the Superior Court barred next to no one. AFSCME and UPTE ***voluntarily exempted*** sufficient numbers of employees. As proof of the sufficiency of this, PERB only sought to bar 5 AFSCME positions and 2 UPTE positions from participating in the strike; it sought to designate 24 more AFSCME positions and 3 UPTE positions as on-call. (Exhibit B.) Despite only 7 employees actually being ordered not to engage in the March 20strike, Duckett wrote ominously to all AFSCME and UPTE bargaining unit members to sow doubt in their minds. Duckett all but said it outright: “UC is taking unnamed legal action and might decide that you’re barred from striking, so why not play it safe and come to work?”

Were Duckett’s letter itself not enough, he attached additional documents restating his arguments. A “talking points”-type document urges employees to report to work rather than strike, pressing them to report feeling threatened to supervisors/administrators/labor relations. (*Ibid.*) UC goes so far to hyperbolically claim that it “will assist employees who want to work by providing security or transportation across picket lines.” (*Ibid.*) UC offers no evidence whatsoever—none exists—of confrontations between bargaining unit members on the picket lines. By all accounts, picket lines were peaceful at all locations in AFSCME’s 2018 strikes. In fact, the only reported instance of picket-line violence involved a UC supervisor at UC Davis attacking an AFSCME organizer. UC’s insinuation that picket-line crossers will need to fear for their safety is baseless and clearly meant to coerce bargaining unit members into not participating in picketing activities.

In a similar vein, the second attachment is an “FAQ”-style document that attempts to ratchet-up bargaining unit members’ sense of fear. UC repeats the claim that strikes in which both the Unions and PERB go to great lengths to ensure minimum staffing and continuity of essential services can still negatively impact patient care, asserting that it must unilaterally take matters into its own hands. The FAQ even attempts to spin the claim that striking at UC is illegal: “Legality of striking; previous court orders against strikes at UC.” (*Ibid.*) UC makes no mention of the fact that numerous strikes since 2013 have proceeded lawfully at UC, in which nearly all employees were lawfully permitted to participated. PERB has only ever enjoined a tiny fraction of employees to ensure continuity of specific public services, yet UC’s FAQ cynically flips this to claim that the strikes themselves were somehow unlawful. The FAQ also repeats UC’s threat that it will “seek legal protection for patients against a strike” to give the utterly false impression that it will somehow take legal action against individual employees who exercise their right to strike.

Both the FAQ and “talking points” documents further threaten bargaining unit members with the possibility that they will be fined for crossing the picket line—unless they drop their union membership. The “talking points” document ominously states,

Some unions have the right to fine members, but not non-members, who choose to work during a strike, including a sympathy strike. If you don’t want to strike, you may want to contact your local union representative to confirm there will not be fines. Even if the union does levy fines, UC will **not** deduct fines from employees’ paychecks.

(*Ibid* [emphasis supplied].) The FAQ also urges employees to contact their unions “to confirm there will not be fines” if they cross the picket line, while continuing that they will only receive pay if they report to work. (*Ibid.*) This threat is a fabrication; neither AFSCME nor UPTE ever indicated to their members that they risked fines for crossing picket lines in the March 20 strike.

The purpose of Duckett’s letter is transparent in comparison to the letter distributed on March 15, 2019 by Vice Chancellor for Administration Marc Fisher to all UC Berkeley community members. (Exhibit C.) Given that Vice Chancellor Fisher’s communication to all UC Berkeley community members, Duckett’s message was superfluous—except inasmuch as he sought to interfere with the rights of AFSCME and UPTE represented employees to strike and to encourage them to drop their union membership. The AFSCME Local 3299 constitution does not even mention strike fines, let alone authorize AFSCME to levy them.

Duckett’s letter and the FAQ attachment conclude by directing employees to Labor Relations and their supervisors/managers with questions. The only direction to address questions to the Unions is to see if they are going to be fined for crossing the picket line. The letter in no way instructs employees to direct union membership questions to the Unions.

2. Letter from UC Berkeley Labor Relations to All AFSCME and UPTE Represented Employees

On March 15, 2019, UC Berkeley Labor Relations sent a communication to at least all SX, RX, and TX Unit employees entitled “March 2019 Strike Information for Employees.” (Exhibit D.) The communication was presented in an “FAQ” format, comprised of 9 question-and-answer paragraphs. (*Ibid.*)

The communication pivoted around paragraphs 5 and 6, where UC attempted to leverage the strike to encourage AFSCME and UPTE members to drop their membership. UC wrote,

some unions have the right under their internal union bylaws to levy fines against dues-paying members, ***but not non-members (those who do not pay dues)***, who choose to work during a strike, including a sympathy strike. Even if the union does levy fines, the University will not deduct union fines from employees’ paychecks. Fines would be handled directly between the union and its members.

[. . .]

Employees who are absent from work without authorization during a strike will not be paid for the absence.

(*Ibid* [emphasis added].)

UC's enticement is clear: "Cross the picket line, get paid, and don't pay your fines. We won't deduct them from your paycheck." UC's intended message clearly goes even further: "Drop your union membership and come to work. If you don't drop your membership, you'll lose money one way or another, either through fines or lost wages." (*Ibid.*) In reality, UC brazenly invented the threat of union fines to encourage workers to drop their union membership. AFSCME and UPTE never themselves indicated they would fine their members for choosing to report to work during the strike.

The UC Berkeley letter directs employees to contact Labor Relations, their supervisors, or their managers with questions. The letter in no way instructs employees to direct union membership questions to the Unions.

On March 18, 2019, this communication was sent again to all bargaining unit members at UC Berkeley. This time, Paragraph 2 was underlined in red:

2 – What will happen during the strike?

Employees participating in the strike may not show up for work, join a picket line on campus, pass out informational flyers, and/or participate in other activities organized by the union(s).

(Exhibit E.) This statement is outrageously inaccurate, blatantly misinforming bargaining unit members regarding their HEERA-protected rights. Bargaining unit members participating in the strike ***have a HEERA-protected right*** to join picket lines, pass out informational fliers, and participate in union activities.

UC's assertion is so obviously false under PERB law that at first blush it might be mistaken for a typo—but it was clearly intentional. This same false statement appeared in the March 15 distribution. (Exhibit E.) In the March 18 distribution, UC emphasized this statement with red underlining, doubling-down rather than correcting its flagrantly wrong claim that striking employees would not be allowed to participate in picketing, flyering, and other union activities during the strike. (*Ibid.*) UC unmistakably intended to use this falsehood to coerce employees into not exercising their HEERA-protected rights.

3. Letters from UC Irvine and UC San Diego Labor Relations to All AFSCME and UPTE Represented Employees

On March 18, 2019, Paul Kronheim from UC Irvine Medical Center Labor Relations distributed something he deemed "an important message in both English and Spanish from our UC Office of the President for AFSCME represented employees in the Patient Care Technical unit." (Exhibit G.) The letter summarized UC's version of its proposals at the bargaining table,

concluding “AFSCME’s delays are costing you a lot of money! . . . You deserve a contract – not another strike!” (*Ibid.*)

The communication continued by stating UC’s one-sided estimate of the amounts “average AFSCME-represented employees have been missing in **EACH PAYCHECK** since union leaders rejected UC’ 2018 settlement offers.” (*Ibid* [emphasis original].) Although UC is not upfront about how it calculated its estimates, stating that workers are losing money in each paycheck because of their continued commitment to strike is clearly misleading and intended to interfere with their protected activity. UC plainly omits from its calculations how much worse employee compensation would be with the University’s proposed 401(k)-style retirement plan in place, for example.

This same message was distributed to AFSCME and UPTE-represented employees by UC San Diego Health Labor Relations on March 19, 2019.

4. UC’s Communications With and Harassment of Prominent Union Activist ██████████ Comports With Its Strategy of Spreading Fear and Misinformation Through Its Communications With Employees

UC’s systematic harassment of union activists has found its worst expression in its long-term targeting, surveillance, and intimidation of ██████████, a UC Merced custodian and a member of the union’s executive and bargaining committees. ██████████’s work as a vocal union activist has provoked retaliatory and unfavorable work assignments, denial of transfers, and attempts by UC to force her out. In addition, UC has regularly monitored ██████████’s communications with her coworkers, and in more than one instance, called ██████████ into meetings to reprimand her for talking about union activities with coworkers before work. UC also allowed ██████████ to be subjected to violent verbal assaults by supervisors, including an incident in October 2018, when ██████████ was violently accosted by a supervisor, who shouted at her, “What the hell are you doing on campus?” and tried to force her to leave. When ██████████ shaken, reported the incident to UC, UC did nothing to discipline the assailant.

In February 2019, ██████████ was subjected to two frivolous and trumped up write-ups. One of the write-ups again reprimanded her for speaking to coworkers about the union before work.

At present, ██████████ is out on medical leave without pay, having suffered extreme emotional distress as a result of UC’s persecution of her for her union-related activities. Her return to work date is unknown.

C. UC Supervisors Have Also Encouraged Bargaining Unit Members to Drop Union Membership, For Example by Claiming They Can “Give Themselves a Raise” by Quitting

██████████ was employed as a Hospital Assistant 3 at UC San Diego Medical Center (“UCSD-MC”). ██████████ was ██████████’ direct manager, ██████████ a supervisor in the department, and ██████████ and ██████████ two of ██████████’ coworkers.

Shortly after [REDACTED] a new manager, began work at the Medical Center, [REDACTED] along with [REDACTED] and [REDACTED] were called into a meeting by [REDACTED] and [REDACTED]. During this first meeting, [REDACTED] aggressively encouraged [REDACTED] and her colleagues to drop their union membership, stating they could “give themselves a raise” by doing so and adding that they could use the “raise” to pay for gas money. [REDACTED] stated that she had had a recent conference call about employees’ options for opting out of union membership with 700 other UC managers. [REDACTED] further instructed [REDACTED] and her colleagues not to tell anyone about the conference call, stating that, “If they find out that I’m telling you guys to drop the union to save a little extra money, I’m going to get fired.” [REDACTED] further stated that UC had recently sent out an email to union employees about the effects of the Supreme Court’s decision in *Janus* on union employees’ rights, concluding, “If you haven’t received the email [to opt out], I can make sure you can get the email.” Shocked by these aggressive overtures, and with [REDACTED] and [REDACTED] still present, [REDACTED] stated to her colleagues that they should talk to their MAT leader, [REDACTED], instead of listening to [REDACTED].

Following the meeting, [REDACTED] became aware that [REDACTED] dropped her union membership. [REDACTED] believed that [REDACTED] did so as a direct result of management’s intimidating conduct during the meeting. Also following the meeting, [REDACTED] and [REDACTED] began to subject [REDACTED] to a series of adverse employment actions that extended over a period of several months. The managers reduced [REDACTED]’ work time; arbitrarily changed her schedule; and alternately excluded her from numerous staff meetings and called her into meetings to berate and intimidate her. Additionally, when [REDACTED] asked when she would be promoted to a full-time position, as previously promised, she was repeatedly given no answer.

At the end of several months, understanding that she was being forced out, [REDACTED] applied to, and obtained, a transfer to a full-time position in the Rheumatology Department.

D. During the Strike, UC Police Interfered With Picketing, Telling Picketers They Would Face Criminal Penalties For Engaging in Lawful Picketing Activity

On March 20, 2019, at the UCLA campus, organizer [REDACTED] and striking workers were threatened with citation by police officers for engaging in peaceful strike-related activities. Specifically, police officers told the striking workers that they were not allowed to use bullhorns and other sound amplification equipment during the strike because such activity was against the law, despite the fact that striking workers had used identical sound equipment during strikes in 2018. UC Police warned workers that they could be cited pursuant to the penal code for engaging in these activities. In short, they were told by UC’s own police force, that their traditional form of protest would be handled as a *criminal* matter.

Similarly, on the same day at the UCSB campus, police officers told organizer [REDACTED] and striking workers that sound amplification equipment was not allowed during the strike, despite the fact that striking workers had used identical sound equipment during strikes in 2018. The workers were forced to refrain from using the equipment in violation of their right to peacefully demonstrate.

E. UC Meanwhile Provided Perks to Employees to Encourage Them to Cross the Picket Line

During the October 2018 strike, a Nuclear Medicine Technologist at UCLA Ronald Reagan Medical Center (UCLA RR), observed that management threw a pizza party for workers who crossed the picket line during the October 2018 strike.

Also during the October 2018 strike, a Med Center Cook at UCLA Santa Monica Medical Center (UCLA SMMC) observed management hand out gift baskets to workers who crossed the picket line. In addition, management held an all-staff meeting where they publicly praised workers who crossed the picket line as having gone “above and beyond for patient care,” thereby implicitly and publicly criticizing striking workers for walking-out on strike.

During the March 2019 strike, the same management team at UCLA SMMC rewarded workers who crossed the picket line by arranging a lunch for those workers that included an upscale catered meal and a cake. At UCLA RRMC, Workers in the oncology department were provided free pizza and soda during the strike. CT Techs in the radiology department were provided with free lunch, comprised of a sandwich, water, chips, and a cookie.

At UC Davis, during the March 2019 strike, all workers who crossed the picket line were given free breakfast and lunch from the cafeteria. Staff simply had to show their badge in the cafeteria, and they were allowed to take bagels, cinnamon buns, and coffee in the morning, and during lunch had different options, such as sandwiches, Asian salad, and vegan options, and drinks. There was free coffee all day.

For its part, UC Irvine threw a pool party for the all Housing Department staff on the day of the strike. Three days after UC received notice of the strike, on March 11, 2019, Director of Housing Administrative Services [REDACTED] sent an email to all staff in her department declaring the day of the strike to be “Staff Spring Break! – Wednesday, March 20th – ARC Pool Deck [. . .] GET READY FOR SPRING BREAK!! * SEE YOU ON THE POOL DECK!” (Exhibit J.)

F. Preceding the May 2018 Strike, AFSCME Submitted an RFI for Information Pertaining to UC’s Strike Preparations in Order to More Precisely Tailor its Staffing Offers, Ensure Patient Safety, and Obviate Any Need for A Strike Injunction Covering Essential Employees; Before the March 2019 Strike, AFSCME Submitted Essentially the Same RFI; UC Has Fulfilled Neither RFI

On August 9, 2017, through counsel, AFSCME submitted a letter to the University. This letter had several purposes. First, AFSCME sought to engage the University in early discussions about any “essential employee” claims that the University might make in relation to a potential strike. Moreover, with or without such discussions, the Union requested information and records (under both HEERA and the California Public Records Act) which would be necessary and relevant to evaluating any alleged “essential employee” claims that the University might make,

and therefore were necessary and relevant to the Unions to carry out their representational duties. Furthermore, AFSCME hoped to engage the University and PERB in early thinking about how to help the agency deal, procedurally, with any request for injunctive relief that might ensue, given that the University had in the past sought injunctions and AFSCME anticipated a great amount of briefing and argument as to the merits of any such request for injunctive relief. On October 9, 2017, AFSCME reiterated its RFI, noting that UC had still not provided virtually any information in response. The University in fact never satisfied this RFI, which is the subject of the currently pending PERB Case No. 1183-H.⁴

On March 11, 2019, in anticipation of the March 20, 2019 strike, Counsel for AFSCME Kate Hallward yet again submitted essentially the same RFI. The entire RFI is attached hereto as Exhibit G. In summary, it sought information regarding the following:

- UC's census reduction, diversion, and rescheduling procedures at its medical centers in connection with the May 2018 strike;
- Results of the University's polling of employees in connection with the strikes of March 20, 2019, October 2018, and May 2018;
- Availability of non-unit personnel including temporary replacements to cover the work of striking bargaining unit workers in the May 2018 and October 2018 strikes;
- Whether the University had contacted and contracted with all providers of strike replacement workers following the Superior Court's temporary restraining order of May 4, 2018; and
- For each position the University sought to enjoin, whether the University had contacted the AFSCME Patient Protection Task Force ("PPTF") to determine if the PPTF could staff those positions.

(*Ibid.*) She emphasized that time was of the essence given UC's intent to seek injunctive relief before March 20. On March 11, Counsel for UC Tim Yeung acknowledged receipt of the RFI and stated that he would contact Hallward the following day in order to meet and confer over the request. (Exhibit H.) Yeung never contacted Hallward, so Hallward followed up on March 20 reasserting the RFI and stating AFSCME's expectation that UC respond to it. (*Ibid.*) UC has still not satisfied this RFI, in addition to AFSCME's RFIs at issue in PERB Case No. 1183-H, and those following up on those requests in relation to the May 2018 and October 2018 strikes. The effect of UC's steadfast refusal to provide the Union with this information interferes with the Union's ability to strike, and interferes with specific members' ability to participate as the information that UC refuses to share would surely support the conclusion that UC had alternative options available to it rather than seeking a court order stripping various workers of their right to strike.

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⁴ UC also never satisfied an essentially identical RFI on behalf of UPTE, which is the subject matter of PERB Case No. 1184-H.

G. UC's Intensifying Claims Over Recent Months That It Is Above the Law

UC's lawless conduct fits its apparent view that it is above the law, which it has asserted explicitly in recent litigation. On November 4 and 14-5, 2018, a consolidated hearing was held in PERB Case Nos. SF-CE-1188-H, SF-CE-1189-H, and SF-CE-1192-H, concerning the University's violation of new legislation based on charges brought by AFSCME, UPTE, and Teamsters Local 2010. On June 27, 2018, the Legislature enacted SB 866. It requires, *inter alia*, that public employers meet and confer with union representatives regarding the content of any "mass communication to public employees or applicants . . . concerning public employees' rights to join or support an employee organization, or to refrain from joining or supporting an employee organization" as provided in Government Code Section 3553(b). The statute is also clear that the meet-and-confer requirement applies to mass communications concerning union membership or support. (*See* Gov. Code 3553(e) [defining "mass communication" as "a written document . . . that is intended for delivery to multiple public employees."].)

SB 866 also enacted Government Code Section 3550 as declaratory of existing law.⁵ It states that, "[a] public employer [including UC] shall not deter or discourage public employees or applicants to be public employees from becoming or remaining members of an employee organization, or from authorizing representation by an employee organization, or from authorizing dues or fee deductions to an employee organization." By enacting SB 866 in 2018—together with AB 119 in 2017—the California Legislature aimed to ensure that public employers would not dominate the relationship between employees and their unions. Indeed, the relationship between a union and the employees it represents is an internal matter best left to the parties to that relationship rather than the employer which may have its own interests in destabilizing the union's ranks. (*See* Gov. Code § 1157.12(b) [questions regarding membership to be addressed by union as an internal matter without employer involvement].)

UC's systemwide Director of Labor Relations Peter Chester offered testimony at the November hearing that showed utter contempt for this legislation, which shocked the Unions. Chester testified that, in the wake of the U.S. Supreme Court's decision in *Janus v. AFSCME* (2018) 585 U.S. ___, the University intentionally sought to commandeer the relationship between bargaining unit members and their unions: "[T]hat's consistent with this gate-keeping idea. So, in the first instance, we wanted them to go to us [with questions about their rights]. And then, depending upon the nature of their question, they would be instructed to go to a union person." (Hearing Transcript Vol. 3 in PERB Case No. 1188-H *et al.*, p. 150.) The University would not simply direct employees to their unions "[b]ecause that's inconsistent with our interest in maintaining that gate-keeper role." (*Ibid.*)

⁵ The pre-existing prohibition on employer interference with employee choice is reflected in the PERB-administered statutes that require public employers to bargain in good faith and prohibit employer interference with collective bargaining rights. (*See, e.g.* Gov. Code Section 3571(a), (b) and (c) [it is an unfair practice under HEERA to interfere with employee rights to participate in their union, to deny to employee organizations their rights, and to refuse and/or fail to bargain in good faith, respectively].)

The Unions were shocked again by the University's clear disrespect for the law in another PERB hearing on February 4-5 and 8, 2019, in PERB Case Nos. SF-PE-1-H and SF-PE-2-H. That hearing was held to litigate UC's violation of AB 119, which was enacted on June 27, 2017, a year before SB 866's enactment. AB provides, *inter alia*, that public employers must provide unions with specified employee contact information on ongoing basis. (See Cal. Gov. Code Section 3558).¹ In UC's opening statement, its Counsel articulated for the first time on the record its defense that it is entitled to a "reasonable period of time" of its own definition to come into compliance with AB 119—no matter what AB 119 itself says: "What we are asserting in this hearing is that there has to be a reasonable period of time that an employer has to come into compliance with the law." (Hearing Transcript Vol 1 in PERB Case No. SF-PE-1-H *et al.*, p. 20.) AB 119 specified a maximum period to first come into compliance of 120 days. (Gov. Code § 3558.) The hearing was taking place **20 months** after the enactment of AB 119. UC remains out of compliance to this day, under the preposterous view that its non-compliance is "reasonable," and that it gets to decide when it is time for it to finally comply with the law.⁶

Given UC's conduct in this recent litigation, it is clear to AFSCME that UC will continue to openly flout the law, with little concern for PERB's remedial powers. No matter the consequences before PERB, UC is insistent on dominating AFSCME's relationship with its bargaining-unit members. UC's conduct preceding and during the March 20 sympathy strike fits this same pattern, giving rise to the instant Charge.

III. Discussion

A. Interference

The interference standard in *Carlsbad Unified School District* (1979) PERB Decision No. 89, pp. 10-11 ("*Carlsbad*") applies to any case in which, like this one, a public employer "is alleged to have interfered with the rights of employees, or restrained or coerced employees in their exercise of their rights." *State of California (Dep't of Personnel Admin.)* (2011) PERB Decision No. 2106a-S, p. 14 ("*Dep't of Personnel Admin.*"). The *Carlsbad* standard applies to a broad fact category embracing collectively held employee rights, without reference to any individual employee's rights, and without comparison to any other group of employees. (Compare *Novato Unified School Dist.* (1982) PERB Decision No. 210 (individual employee rights); and *Campbell Municipal Employees Ass'n v. City of Campbell* (1982) 131 Cal. App. 3d 416 (discrimination between groups of employees on the basis of protected activity) ("*Campbell*").) There can be no doubt that *Carlsbad* applies here, as a result. This should be especially clear since *Carlsbad* arose under Section 3543.5(a) of the Educational Employee Relations Act, whose language is identical to Section 3571(a) of HEERA.

Under *Carlsbad*, all that is required to establish a *prima facie* case is for a charging party to "demonstrate that the employer's conduct tends to or does result in harm to employee rights. Once a *prima facie* case is established, the burden shifts to the employer to justify its conduct." (*Dep't of Personnel Admin., supra*, PERB Dec. No. 2106a-S at p. 14.) PERB then weighs the strength of the employer's justification against the level of harm inflicted on employee rights.

⁶ AFSCME in fact has concurrently submitted another unfair practice charge alleging UC's continued violation of AB 119.

(*Id.*) Slight harm to employee rights paired with a justification based on operational necessity invites a further balancing test to evaluate whether the employer has committed an unfair labor practice by acting disproportionately. (*Id.*) Harm that is “inherently destructive of employee rights” instead subjects an employer to the stringent requirement that it show its conduct to be “occasioned by circumstances beyond [its] control and that no other course of action was available.” (*Id.*)

1. The Violent Attack on AFSCME Members and Staff While Picketing in October 2018—and Continued Presence of Their Attacker on Campus—Has Unlawfully Interfered With HEERA-Protected Employee Rights

An employer’s acts of violence on the picket line constitutes unlawful interference, even if the employer’s attack is against non-employees acting on the Union’s behalf. (*Roger D. Hughes* (2005) NLRB 413 [deliberate assault by employer against union field representatives engaged in area standards picketing constituted unlawful interference].) Furthermore, an employer who effectively condones acts of violence or racial intimidation committed by others—as distinct from committing such acts him/herself—against strikers and union representatives unlawfully interferes with protected rights. (*Domsey Trading Corp.* (1993) 310 NLRB 777, 780.)

Here, merely reciting the facts establishes a *prima facie* case of unlawful interference. On October 25, 2018, UC Davis Facilities supervisor [REDACTED] violently attacked AFSCME members and staff, as well as other non-employee supporters, while they were peacefully picketing at 6:30 in the morning. [REDACTED] used his pickup truck, his bare hands, and whatever he could grab as weapons to threaten, shove, strike, and choke AFSCME members and staff. While he did this, he was wearing a UC Davis Facilities shirt. UC further condoned these acts by waiting until it was shamed into doing so by the posting of a student video of the incident to place him on administrative leave and investigate, after which UC has refused to respond to AFSCME’s inquiries as to whether measures are in place to ensure that AFSCME bargaining-unit members and staff are safe.

2. UC’s Pre-Strike Mass Communications Constitute Unlawful Interference With HEERA-Protected Employee Rights

Employer communications constitute unlawful interference when they contain “a threat of reprisal, force, or promise of benefit.” (Gov. Code § 3571.3.)

Here, UC’s communications make no effort to conceal their threats and promises of benefit. The threat in Duckett’s systemwide letter is overt. He said, “UC will seek legal protection for patients against a strike due to the imminent threat it poses to public health and safety. We will let you know if your position is among those that are barred from striking.” (Exhibit A.) An ordinary reader would take this to mean that UC would potentially take legal action against him/her for striking, and that UC could come knocking any time. The FAQ also repeats UC’s threat that it will “seek legal protection for patients against a strike” to give the false impression that UC will somehow take legal action against individual employees who exercise their right to strike.

Both the FAQ and “talking points” documents further threaten bargaining unit members with the possibility that they will be fined for crossing the picket line—unless they drop their union membership. The “talking points” document ominously states,

Some unions have the right to fine members, but not non-members, who choose to work during a strike, including a sympathy strike. If you don’t want to strike, you may want to contact your local union representative to confirm there will not be fines. Even if the union does levy fines, UC will **not** deduct fines from employees’ paychecks.

(*Ibid* [emphasis original].) The FAQ also urges employees to contact their unions “to confirm there will not be fines” if they cross the picket line, while continuing that they will only receive pay if they report to work. (*Ibid.*)

The Duckett letter also—in an act of cynical and gross irresponsibility—gins up a false threat of physical violence against picket-line-crossers, to offer the promise of personal UC security escorts. The only examples of violence on the picket lines in 2018, in any event, were examples of violence committed against lawful picketers, including by at least one UC supervisor.

The UCB letters continue in this vein. UC wrote,

some unions have the right under their internal union bylaws to levy fines against dues-paying members, but not non-members (those who do not pay dues), who choose to work during a strike, including a sympathy strike. Even if the union does levy fines, the University will not deduct union fines from employees’ paychecks. Fines would be handled directly between the union and its members.

[. . .]

Employees who are absent from work without authorization during a strike will not be paid for the absence.

(*Ibid.*) UC’s threat and enticement are clear: “If you don’t drop your membership, you’ll lose money one way or another, either through fines if you come to work or lost wages if you strike.” (*Ibid.*) This Hobson’s choice was obviously calculated by UC to encourage workers to drop their membership. UC’s intent to threaten is all the more apparent in that it completely fabricated the notion that employees risked being fined for crossing the picket lines; neither AFSCME nor UPTE ever indicated to their membership that they would impose fines for crossing the picket lines.

UC Berkeley also issued and then doubled down on a blanket prohibition against participating in strike activities. It said, “Employees participating in the strike **may not** show up for work, join a picket line on campus, pass out informational flyers, and/or participate in other activities organized by the union(s). (Exhibit E [emphasis added].) This blunt prohibition against engaging in protected strike activities carries the obvious threat of employment discipline and the

threatened legal action invoked in the Duckett letter. UC unmistakably intended this falsehood to coerce employees into not exercising their HEERA-protected rights.

The messages distributed at UC Irvine and UCSD Medical Centers similarly contained a “promise of a benefit” by claiming that workers would receive more money if only they chose not to strike. The UC Irvine and UCSD Medical Center letters urge employees not to strike, and to accept UC’s bargaining proposals, based on the claim that “average AFSCME-represented employees have been missing [money] in **EACH PAYCHECK** since union leaders rejected UC’s 2018 settlement offers.” (Exhibit F [emphasis original].) This unlawfully offered bargaining unit members a “promise of a benefit” in exchange for not exercising their right to strike.

Although all that is necessary to establish a prima facie case is to show that UC’s conduct harmed employee rights—which the above amply does—it is further clear that UC’s conduct caused harm that was “inherently destructive of employee rights.” (*Dep’t of Personnel Admin.*, *supra*, PERB Dec. No. 2106a-S at p. 14.) UC attempted to undermine a lawful strike by spreading disinformation, threats, and enticements tailored to get bargaining unit members to cross lawful picket lines. UC cannot muster a defense because it cannot demonstrate that “no other course of action was available” but to distribute such communications. (See *id.*) The question of minimum staffing was litigated before PERB and Sacramento Superior Court, which found UC to have sufficient staffing options for the day of the strike. There is accordingly not even operational necessity to intimidate and entice employees into crossing the picket lines, let alone “no other cause of action . . . available.” (See *id.*)

3. UCSD Interference, Communications Regarding Dropping Union Membership

UC’s conduct at the UCSD Medical Center constitutes unlawful interference. UC’s attempts to coerce employees into dropping their union membership through a campaign of explicit anti-union statements, repeated emails describing the opt-out right, and retaliatory conduct extending over a period of months plainly constitutes conduct that “tends to or does result in harm to employee rights.” Management pressure on employees to drop the union would have the natural result of compelling employees to drop membership. This likelihood is particularly exacerbated here, with employees rendered more vulnerable to the demands of a new manager, [REDACTED] whose preferences might soon re-order employees’ workplace environment. And in fact, management did effect harm to employees’ exercise of protected rights: Due to [REDACTED]’s intimidation, at least one employee actually dropped union membership soon after the relevant meeting.

Furthermore, actual reprisal against employees for defying managerial pressure to drop union membership—manifested through [REDACTED]’s harassing and exclusionary treatment of [REDACTED] after she encouraged her coworkers to talk to the union instead of obeying [REDACTED]—constitutes conduct inherently destructive of protected rights. [REDACTED]’s intimidation of [REDACTED] for her pro-union statements was evident to all staff. In fact, [REDACTED]’s treatment of [REDACTED] made the workplace so intolerable that [REDACTED] had no choice but to transfer to another department. This harassing conduct was inherently destructive towards both [REDACTED]’s rights and the rights of [REDACTED] coworkers. Witnessing harassment and retaliation

against an employee for voicing pro-union views would reasonably deter other employees from engaging in protected activity, for fear that management would visit similar retaliation upon their heads.

**4. UC Merced Interfering and Retaliatory Conduct Toward [REDACTED]
[REDACTED] A Prominent Union Activist**

UC's egregious and undisguised persecution of [REDACTED] [REDACTED] for her status as a vocal union activist—and member of Local 3299's Executive Board—easily establishes a prima facie case of unlawful interference. UC's conduct has spanned the gamut from retaliatory work assignments and denials of transfers to favorable shifts to failure to protect [REDACTED] from violent verbal assaults from supervisors. Such a blatant pattern of misconduct towards a union activist constitutes unlawful interference in violation of HEERA.

In fact, both PERB and numerous federal cases have held that employer conduct directed against a union officer, steward or other employee representative in her capacity as a representative is inherently destructive of employee and organizational rights. *See, e.g., Santa Clara Valley Water District* (2013) PERB Decision No. 2349-M, pp. 22-23; *Allis-Chalmers Corp.* (1977) 231 NLRB 1207, 1213. This is so because the "natural and foreseeable consequence" of permitting an employer to target and harass an employee representative exercises an inevitable chilling effect upon the rights of all employees. *Santa Clara Valley Water District* (2013) PERB Decision No. 2349-M, pp. 22-23, 26. Here, UC's long-term targeting of [REDACTED] has a chilling effect on the rights of [REDACTED] coworkers, who are not just less likely to join in protected union activities as a result of witnessing UC's harassment of [REDACTED] but who will also suffer from [REDACTED] absence on leave as an organizing force in the workplace.

5. UC Police at UCLA and UCSB Attempted to Silence Picketers By Threatening Them With Criminal Penalties For Using Bullhorns While Protesting, Which is Protected Activity

The police activity at the strikes in UCLA and UCSB illegally interfered with workers' right to strike. Police officers threatened workers with citations if the workers exercised their right to protest on campus. These threats of citation and the presence of police forces detracted from workers' ability to engage in protected activity through threats, intimidation and surveillance, especially in light of the numerous incidences of violence endured by striking workers at the hands of law enforcement and UC management at other campuses.

6. UC Interfered With The Right of AFSCME-Represented Employees to Strike By Providing Perks to Employees to Encourage Them to Cross the Picket Line

Here, management's preferential treatment of workers willing to cross the picket line is a classic example of illegal interference. UC distributed rewards in the form of gift baskets, free cafeteria food, catered meals and pool parties for these individuals, and even went so far as to heap public praise upon these workers for declining to honor the strike. These blatant displays of favoritism by UC management harmed union employees' protected rights by providing an

implicit criticism of striking employees and deterring employees from engaging in future protected strike activity. Furthermore, UC cannot show that it had no alternative available to it in engaging in these actions, as simply refraining from showering “loyal” employees with goodie baskets and free meals could not possibly have impaired its operations in any way.

B. UC Violated Government Code 3550 by Deterring and/or Discouraging Employees From Becoming or Remaining Union Members

Government Code Section 3550 clarifies that employer interference prohibited under HEERA Section 3571(a) includes any actions by a public employer that deter or discourage public employees from becoming or remaining union members. Gov. Code § 3550 states that “A public employer shall not deter or discourage public employees or applicants to be public employees from **becoming or remaining members** of an employee organization, **or from authorizing representation by an employee organization, or from authorizing dues or fee deductions to an employee organization.**” Government Code Section 3550 harmonizes with Government Code Section 3571.3, furthermore, which provides that employer communications constitute unlawful interference when they contain “a threat of reprisal, force, or promise of benefit.” (Gov. Code § 3571.3.)

Deterrence under Section 3550 is a “threat of reprisal” or “force”, while discouragement a “promise of a benefit.” The California Supreme Court has interpreted “to deter” in other statutory language as the use of threats in order to prevent the commission of an act. (*In re Manuel G.* (1997) 16 Cal.4th 805, 810-11, 885 [interpreting Penal Code Section 69 prohibiting the use of “any threat or violence, to deter or prevent an executive officer from performing any [lawful] duty . . .”].) The Supreme Court has meanwhile interpreted “discouragement” in statutory language as the use of financial disincentives to influence the choices a public employee makes in exercising her statutory rights. (*California Teachers Assoc. v. State of California* (199) 20 Cal.4th 327, 341.)

1. UC’s Written Deterrence and Discouragement

Here, the Duckett letter and UCB letters unlawfully deterred and discouraged employees from joining or supporting AFSCME. The “talking points” document attached to the Duckett letter ominously threatened members who crossed the picket line with union fines—fines that the unions never indicated they would levy. (*See* Exhibit A.) In the same breath, it states that non-members would not be fined. (*Ibid.*) The FAQ likewise urges employees to contact their unions “to confirm there will not be fines” if they cross the picket line, while continuing that they will only receive pay if they report to work. (*Ibid.*) The UCB letters followed suit, raising the specter of union fines unless employees dropped their membership. (Exhibit D.)

UC’s deterrence and discouragement in the Duckett letter and the UCB letters was clear: “If you don’t drop your membership, you’ll lose money one way or another, either through fines if you cross the picket lines or lost wages if you strike.” (*Ibid.*) This Hobson’s choice was obviously calculated by UC to encourage workers to drop their membership. The only way to not lose money in UC’s telling was to cede to the threat of fines by quitting the union, as well as to

cede to the discouragement from striking in the form of lost wages. By this same logic, these letters deterred and discouraged non-members from becoming AFSCME members.

UC's communications therefore unlawfully deterred and discouraged employees from "becoming or remaining members" of AFSCME.

2. UC's Verbal Deterrence and Discouragement

UC's explicit and repeated instructions to [REDACTED] and her colleagues at UCSD to drop their union membership to "save gas money" unlawfully deterred and discouraged employees from joining or supporting AFSCME. UC could not have been more clear in its message: Management repeatedly and expressly told employees to drop their union membership, sent several emails encouraging that outcome, and in fact, at least one employee did drop her membership soon after receiving this instruction. UC's unlawful efforts to deter and discourage employees from remaining in the union extended over a period of months, as UC engaged in a retaliatory and public campaign against [REDACTED] for daring to raise a voice in opposition to management's anti-union message.

UC's communications therefore unlawfully deterred and discouraged employees from "becoming or remaining members" of AFSCME.

C. UC Violated Government Code Section 1157.12(b) by Directing Employee Questions About Union Dues and Fee Deductions to Management Rather Than to AFSCME

Government Code Section 1157.12(b) requires that the University direct questions from bargaining-unit employees regarding union dues and fee deductions to AFSCME rather than to management. Here, each of UC's letters deterring and discouraging bargaining-unit members from becoming or remaining AFSCME members directed employees with questions to contact management rather than the Union.

Duckett's letter and the FAQ attachment conclude by directing employees to Labor Relations and their supervisors/managers with questions. The only direction to address questions to the Unions is to see if they are going to be fined for crossing the picket line. The letter in no way instructs employees to direct union membership questions to the Unions. (Exhibit A.)

The UCB letters direct employees to contact Labor Relations, their supervisors, or their managers with questions. The letter in no way instructs employees to direct union membership questions to the Unions. (Exhibit D.)

These instructions to direct questions to management and Labor Relations violate Section 1157.12(b) because they come in the context of a broader series of threats and enticements to employees to drop their union membership, as discussed above. With the message to drop union membership at the heart of the Duckett and UCB letters, the underlying meaning of directing employees to contact Labor Relations and management with questions is clear: "We'll help you do it." This violates Government Code Section 1157.12(b).

D. UC's Unilateral Dissemination of the Mass Communications in Violation of Section 3553 Also Constitutes a Failure and Refusal to Bargain Over a Mandatory Subject

SB 866 added provisions to the California Government Code, including section 3553 which in part states:

(b) If a public employer chooses to disseminate mass communications to public employees or applicants to be public employees concerning public employees' rights to join or support an employee organization, or to refrain from joining or supporting an employee organization, it shall meet and confer with the exclusive representative concerning the content of the mass communication.

[. . .]

(e) For purposes of this section, a "mass communication" means a written document, or script for an oral or recorded presentation or message, that is intended for delivery to multiple public employees.

(Gov. Code § 3553 (b), (c), (d).) Gov. Code Section 3553 in effect created a new mandatory subject of bargaining: should the employer choose to disseminate mass communications "concerning public employees' rights to join or support an employee organization, or refrain from joining or supporting an employee organization, it shall **meet and confer** with the exclusive representative concerning the content of the mass communication." It is well settled that a blanket refusal to bargain over a mandatory subject is a *per se* violation of the statutory duty to bargain in good faith. (*Gonzales Union High School District* (1985) PERB Decision No. 480, proposed decision, pp. 39-40.)

Here, UC sent mass communications to thousands of AFSCME-represented employees concerning their "rights to join or support an employee organization, or to refrain from joining or supporting an employee organization." (Gov. Code § 3553 (b).) The Duckett letter urges employees to drop their union membership so that they can cross picket lines and earn pay instead of striking without being fined. (Exhibit A.) After delivering this message to employees, the Duckett letter even directs employees to then contact their unions, "to confirm there will not be fines"—transparently insinuating that they confirm that they have dropped their membership.

The UCB letter repeated this same formula. It attempted to leverage the strike to encourage AFSCME and UPTE members to drop their membership by informing them—falsely—that they could be subject to fines for crossing picket lines, and that they would not be paid for being absent from work during the strike. (Exhibit D.) UCB offered the same Hobson's choice as the Duckett letter: "drop your membership, or else lose money in the form of fines or pay during the strike."

UC never provided AFSCME with notice and an opportunity to meet and confer prior to sending these communications. To the contrary, AFSCME only learned of the Duckett letter

when its bargaining unit members began forwarding it to Union leadership after having received it. AFSCME likewise only learned of the UCB communication when it was forwarded by bargaining unit members to Union leadership.

UC's unilateral mass communications, distributed to multiple public employees (indeed, thousands of employees) via email, mail, hand delivery of written documents and electronic presentation clearly violates Government Code Section 3553.

E. UC's Failure and Refusal to Provide Requested Strike Information Has Repetitively Violated its Duty to Bargain and Interfered With Employee Rights

Requests for information must be answered—even if they pertain to non-mandatory subjects of bargaining—where the Union can meet its burden of demonstrating that the information sought is relevant and necessary to its representational responsibilities. (*Regents of the University of California* (2010) PERB Decision No. 2101, at pp. 31-32 [PERB “uses a liberal standard, similar to a discovery-type standard, to determine the relevance of requested information,” and, even when information is requested regarding a topic that is not within the scope of representation, the charging party is still free to demonstrate the information sought is relevant and necessary to its representational responsibilities]; see also *Chula Vista City School District* (1990) PERB Dec. No. 834, p. 59 [“When a union demands information concerning non-unit employees,” the test is simply the “probable or potential relevance” of the information sought] [citing federal precedent].)

Here, AFSCME sought essentially similar information to what it sought in the RFI underlying PERB Case No. 1183-H. PERB issued a complaint in that case, attached hereto as Exhibit J, on the bases that (1) UC failed and refused to meet and confer in good faith with AFSCME in violation of Government Code section 3571(c), and (2) UC interfered with the rights of bargaining unit employees to be represented by AFSCME in violation of section 3571(a). For the same reasons as in PERB Case No. 1183-H, a complaint should issue in this case.

IV. Remedy

The University must be ordered to remedy, and cease and desist from, all of its unlawful conduct. The remedy must include measures necessary to restore the status quo, make whole all affected employees, and make whole the Union for lost dues resulting from the University's unlawful conduct, along with all other damages suffered by the union. Monetary remedies should be accompanied by interest at the statutory rate.

EXHIBIT A

UNIVERSITY
OF
CALIFORNIA

March 14, 2019

Dear colleague:

Your union is asking you and your bargaining unit colleagues to join in a one-day strike on March 20th.

Striking is serious, and impacts the critical services and care we know you take great pride in delivering to the people who depend on you. We believe it is highly inappropriate for any union to threaten services to patients, students and the public as a negotiating tactic.

It is essential you understand the implications of striking. Attached is important information for you about striking, including your right not to. **Please read it carefully.**

If your union goes through with its strike activities, you may still come to work and we hope you will.

As it has before, UC will seek legal protection for patients against a strike due to the imminent threat it poses to public health and safety. We will let you know if your position is among those that are barred from striking.

UC has been negotiating in good faith with your union for over a year and a half to try to get you a fair contract. Throughout negotiations, UC has demonstrated a good-faith willingness to compromise, and has repeatedly offered enhanced proposals that have included multi-year wage increases and excellent medical and retirement benefits for you, consistent with pay increases and benefits for other union-represented and non-represented employees.

UC believes the way to a deal is at the bargaining table not on the picket lines, and that an agreement should not come at the expense of patients, students, other UC colleagues or the communities we serve.

I am saddened by how long these negotiations have taken, and concerned that we have not been able to give you additional pay increases. You play an important role in supporting the university and we greatly appreciate your hard work and contributions.

We will continue to bargain in good faith to get you the contract you deserve as quickly as possible, but that will require good-faith efforts from both sides.

As always, thank you for everything you do for the university and the people we serve.

If you have any questions, please feel free to contact your local labor relations office.

Sincerely,

Dwaine B. Duckett
Vice President
UC Systemwide Human Resources

Information for UC employees about coming to work during a strike

Your union is once again asking you to strike on March 20th. Below is some important information about your right to work during a strike, and what you can do if you feel threatened, harassed and/or intimidated by union representatives about coming to work during a strike.

It's Your Right to Decide to Not Strike and Come to Work

No employee is ever obligated to strike. Unions are legally prohibited from threatening or coercing members in other ways to keep them from coming to work. Pickets are lawful so long as they are peaceful, conducted only on public property (i.e., sidewalks), do not block access to facilities, do not interfere with the normal course of business, and do not prohibit non-striking employees from working.

UC will assist employees who want to work by providing security or transportation across picket lines. Non-striking employees should avoid confrontations or exchanges with striking/picketing colleagues that might inflame the situation.

If you want to come to work during the strike and are being prevented from doing so, please immediately notify your supervisor or another UC administrator, or your campus labor relations office.

Report Incidents Immediately

If you feel you are being threatened, harassed, intimidated about crossing the picket line, or are prevented from working by picketers or striking employees, please immediately notify your supervisor or another UC administrator, or your campus labor relations office.

UC Will Not Facilitate Union Fines

Some unions have the right to fine members, but not non-members, who choose to work during a strike, including a sympathy strike. If you don't want to strike, you may want to contact your local union representative to confirm there will not be fines. Even if the union does levy fines, UC will not deduct union fines from employees' paychecks.

Important information for union-represented staff about joining UPTE's March 20 one-day strike

Your union is asking you and your bargaining unit colleagues to join UPTE's one-day strike on March 20th. Striking is serious, and impacts the critical services and care we know you take great pride in delivering to the people who depend on you. We believe it is highly inappropriate for any union to threaten services to patients, students and the public as a negotiating tactic. Below is important information about striking, including your right not to. Please read it carefully.

Impacts of strikes on patients

Q. Can strikes negatively impact services to UC patients?

A. Yes. Whenever a union threatens to strike, UC medical centers must begin to take the appropriate steps. The hospital must consider limiting operations, which has an effect on both critical and elective care before, during and after a strike. Referrals from outlying communities may be lost indefinitely, damaging the public trust in our medical facilities. Critical trauma patients may need to be diverted to non-level I facilities, which reduces the quality of patient care. Also, noise from strikes can be very disturbing to patients.

Legality of striking; previous court orders against strikes at UC

Q. Is it illegal for unions to threaten patient care with a strike?

A. Under state law, strikes that pose a substantial and imminent threat to vital public services like patient care are illegal. UC believes it would be considered illegal for certain medical center and student health center employees to strike because it would pose an imminent threat to public health and safety and improperly withhold health care from the public. As it has before, UC will seek legal protection for patients against a strike due to the imminent threat it poses to public health and safety.

Q. Have UC unions ever been legally prohibited from striking?

A. Yes. In 2008, AFSCME asked patient care employees to strike at UC medical centers. At the request of the Public Employment Relations Board (PERB), a judge issued a restraining order against the strike. PERB also issued a complaint against AFSCME for bad-faith bargaining and for encouraging a strike that would endanger the public's safety. Courts also barred certain medical center employees from striking in 2013, 2014 and 2018.

Coming to work and loss of pay during a strike

Q. Will I lose pay for participating in a strike?

A. Employees who are absent from work without prior authorization during a strike will not be paid for the absence. As always, authorization for an absence from work (e.g., vacation leave) may or may not be granted, depending on operational necessity and without regard to the reason for the requested leave.

Q. Do I have to strike? Can I be penalized by the union for not striking?

A. No employee is ever obligated to strike. Unions are legally prohibited from threatening or coercing members in other ways to keep them from coming to work. Some unions have the right to fine members, but not non-members, who choose to work during a strike, including a sympathy strike. If you don't want to strike, you may want to contact your local union representative to confirm there will not be fines. Even if the union does levy fines, UC will not deduct union fines from employees' paychecks.

Q. Will I be paid if I work during a strike? Can my union block me from working?

A. If you come to work, you will receive the same pay and benefits as you normally do. Under the law, you're free to cross a picket line and come to work. Pickets are lawful so long as they are peaceful, conducted only on public property (i.e., sidewalks), do not block access to facilities, do not interfere with the normal course of business, and do not prohibit non-striking employees from working. UC will assist employees who want to work by providing security or transportation across picket lines. Non-striking employees should avoid confrontations or exchanges with striking/picketing colleagues that might inflame the situation. If an employee feels s/he is being harassed or prevented from working by picketers or striking employees, the employee should notify their supervisor or campus labor relations office immediately.

Q. Am I permitted to talk to my supervisor or unit manager about any of this?

A. Absolutely. Your manager is another resource for answers and information.

EXHIBIT B

PUBLIC EMPLOYMENT RELATIONS BOARD



Office of the General Counsel
1031 18th Street
Sacramento, CA 95811-4124
Telephone: (916) 327-8381
Fax: (916) 327-6377



March 15, 2019

Timothy G. Yeung, Attorney
Sloan Sakai Yeung & Wong LLP
555 Capitol Mall, Suite 600
Sacramento, CA 95814

Kate R. Hallward, Attorney
Leonard Carder, LLP
1330 Broadway, Suite 1450
Oakland, CA 94612

Re: *Regents of the University of California v. American Federation of State, County & Municipal Employees, Local 3299 (AFSCME)*
Injunctive Relief Request No. 770
Unfair Practice Charge No. SF-CO-232-H

Regents of the University of California v. University Professional & Technical Employees, CWA Local 9119 (UPTE)
Injunctive Relief Request No. 769
Unfair Practice Charge No. SF-CO-231-H

Dear Parties:

By direction of the Board, the requests for injunctive relief in the above-entitled matters are granted, in part, as to the positions listed in Exhibit A and attached hereto, with the understanding that the Office of the General Counsel will not seek to enjoin any of those listed positions that AFSCME and UPTE agree¹ by **1 p.m., Friday, March 15, 2019**, will not participate in the strike or be available on-call as described in Exhibit A.

Sincerely,

J. Felix De La Torre
General Counsel

Attachment

¹ Any assurance from AFSCME and UPTE that any (or some) of the listed positions will not strike or be available on call as described in Exhibit A should be submitted by an individual authorized to make the commitment, and in a format that the parties would normally rely upon in such matters.

PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Sacramento, California. I am over the age of 18 years and not a party to the within entitled cause. The name and address of my residence or business is Public Employment Relations Board, 1031 18th Street, Sacramento, CA 95811-4124.

On March 15, 2019, I served the Letter regarding Case No. SF-CO-231-H on the parties listed below by

___ placing a true copy thereof enclosed in a sealed envelope for collection and delivery by the United States Postal Service or private delivery service following ordinary business practices with postage or other costs prepaid.

___ personal delivery.

___ facsimile transmission in accordance with the requirements of PERB Regulations 32090 and 32135(d).

X electronic service (e-mail).

Timothy G. Yeung, Attorney
Sloan Sakai Yeung & Wong LLP
555 Capitol Mall, Suite 600
Sacramento, CA 95814

Kate R. Hallward, Attorney
Leonard Carder, LLP
1330 Broadway, Suite 1450
Oakland, CA 94612

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on March 15, 2019, at Sacramento, California.

J. Felix De La Torre
(Type or print name)


(Signature)

PERB EXHIBIT A

University of California
Essential Employee Classifications Represented by

AFSCME Local 3299 (EX/PCT Unit)

Location	Classification/Position (AFSCME)	Imminent Threat/Essential Function	Lack of Replacements	Number Requested Per 24 Hours
UC Davis	CT Techs	Use Computed Tomography (CT) equipment to diagnose and treat patients; Immediate access needed to CT scans for certain types of emergencies, including stroke, trauma and head injuries. Services provided 24/7 (Decl. Del Pizzo)	UC was unable to secure any replacements for previous strikes in 2013 and 2018 who were capable of running the CT machine. Three were enjoined in the 2018 strikes. (Decl. Del Pizzo)	3
UC Davis	Perfusionists	Operate life support heart/lung bypass machines, including for trauma patients; operate life support for neo-natal ICU patients. (Decl. Willson)	Perfusionists are a rare specialty and not available on short notice from a registry. Request is for 3 (less than weekend staffing level) less 1 supervisor. (Decl. Willson)	2

PERB EXHIBIT A

UC Irvine	CT Techs	Use CT equipment to diagnose and treat patients; Immediate access needed to CT scans for certain types of emergencies, including stroke, trauma and head injuries. Services provided 24/7 (Decl. Schneider)	UC Irvine was unable to secure qualified CT Techs during the 2013 and 2018 strikes. This position was enjoined for the 2018 strikes. Request is for weekend/holiday staffing level, less 1 supervisor. (Decl. Schneider)	7 on-call Subject to provisions of Court's Order¹
UC Irvine	MRI Techs	Operate Magnetic Resonance Imaging (MRI) machines; scan tissues and organs in emergent cases; used in cases of internal bleeding or trauma. (Decl. Schneider)	UC Irvine was unable to secure qualified MRI Techs during the 2013 and 2018 strikes. This position was enjoined for the 2018 strikes. Request is for weekend/holiday staffing level of 6, less 1 supervisor. (Decl. Schneider) (Supp. Decl. Schneider)	5 on-call Subject to provisions of Court's Order

¹ All on-call classifications in Exhibit A shall report to work within one hour of the request or within the time stated in the regular on-call policy, whichever is the shorter response time. The number of on-call employees shall be reduced by an equivalent number of employees available on the date of the strike (whether unit members employed in the relevant classifications who report to work or replacement workers from any source, including supervisory or management employees).

PERB EXHIBIT A

UCLA	CT Techs	Use CT equipment to diagnose and treat patients; Immediate access needed to CT scans for certain types of emergencies, including stroke, trauma and head injuries. Services provided 24/7 (Decl. Izzi)	UCLA was unable to secure qualified CT Techs during the 2013 strikes; there were significant problems resulting from lack of personnel. This position was enjoined for the 2018 strikes. Request is for daily staffing level of 20, less supervisors and 5 estimated replacements. (Decl. Izzi) (Supp. Decl. Borgheian)	12 on-call Subject to provisions of Court's Order
			TOTAL:	29

PERB EXHIBIT A

University of California
Essential Employee Classifications Represented by

UPTE-CWA (HX Unit)

Location	Classification/Position (AFSCME)	Imminent Threat/Essential Function	Lack of Replacements	Number Requested Per 24 Hours
UC Davis	Clinical Lab Scientists	Test samples (e.g. blood, urine, spinal fluid) for physicians within short time frame, including STAT samples from ED and OR. (Decl. Antony)	CLS not available on temporary replacement registries. (Decl. Antony.) UC's request is for the same number as were previously enjoined. UPTE's exemptions fall short of this number.	3
UC San Diego	Clinical Lab Scientists	Test samples (e.g. blood, urine, spinal fluid) for physicians within short time frame, including STAT samples from ED and OR. (Decl. Baggett)	Replacement CLS, even if available, would need 3-6 months training to onboard at UCSDMC. (Decl. Baggett.) UPTE's exemptions fall short of the number previously enjoined.	2
			TOTAL:	5

EXHIBIT C

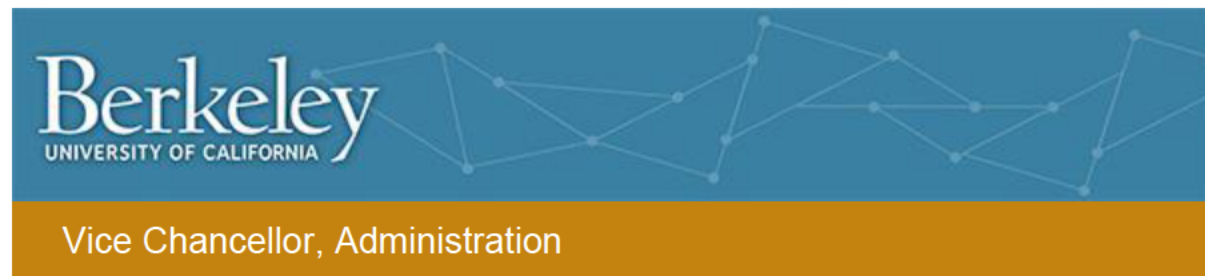
From: **Marc Fisher Vice Chancellor Administration (campus-wide)**

<CALmessages@berkeley.edu>

Date: Fri, Mar 15, 2019 at 6:24 PM

Subject: Strike Action - Wednesday, March 20

To: <calmessages_communication@lists.berkeley.edu>



Dear Colleagues:

What's happening?

Strike action is planned on campus by two of our labor unions next week on Wednesday, March 20, 2019.

How did we get here?

Negotiations between the University and UPTE (University Professional and Technical Employees) for a new contract covering the Research Support Professional Unit (which includes staff research associates and museum scientists) and the Technical Unit (which includes technicians, editors, lab assistants, scene technicians, business technical and support analysts, among others) have concluded without coming to an agreed upon contract. Negotiations between UPTE and the University in the Health Care Professional Unit (which includes counseling psychologists, social workers, pharmacists, laboratory scientists and occupational health technicians) are at impasse. AFSCME (American Federation of State, County and Municipal Employees) which represents employees in the Patient Care Technical Unit (which includes radiologists, medical assistants, pharmacy technicians and opticians) and the Service Unit (which includes custodians, food service workers, bus drivers, grounds workers) remain at impasse.

The University has been informed of the following strike action:

- UPTE employees in the Technical Unit and the Research Support Professional Unit will be engaged in a primary strike commencing at 4:00 am, Wednesday, March 20, 2019 and ending at 3:59 am, Thursday, March 21, 2019.
- UPTE Health Care Professional Unit employees and AFSCME Service Unit and Patient Care Technical Unit employees will strike in sympathy commencing at 4:00 am., Wednesday, March 20, 2019 and ending at 3:59 am, Thursday, March 21, 2019.

What can I expect on campus?

Classes will remain as scheduled, offices will be open, and the campus will provide normal or equivalent services. Faculty, staff, students, and visitors will likely encounter picket lines at some entrances to the campus and buildings. Please remember that the law protects the right of all individuals to cross picket lines. In all previous employee strikes on campus, picketers have been very committed to their point of view but respectful of the views of others. We anticipate that this will continue.

The campus will experience some inconveniences, such as no stack parking and delayed deliveries. [The Loop](#) will continue to be available to students, faculty, and staff with disabilities. Night Safety shuttles will operate with reduced buses so wait times might be longer. Perimeter and day shuttle buses may not run; however, AC Transit has routes that traverse the campus. There will be no shuttle service to Campus Shared Services or the Richmond Field Station. Information on the Loop and AC Transit alternatives can be found on the [Parking and Transportation website](#). Campus areas will be prioritized for custodial services. While mail will be delivered to campus, there will be delays in UPS deliveries. IT Client Services will be provided, but might be delayed.

Where are possible picket locations?

While you may encounter strike activity at any entry point to campus, we understand that possible picket locations may include Bancroft Way at Telegraph Avenue.

What if I have additional questions?

Employees with questions about the strike are encouraged to contact Labor Relations at labrel@berkeley.edu or (510) 643-6001. More information for employees can be found on our [HR website](#).

- For facilities questions, please contact [Facilities Services](#).
- For parking and transportation questions, contact [Parking & Transportation](#).
- For up-to-date information about campus operations during the strike, please consult the [UC Berkeley NewsCenter](#).

We continue to be hopeful that the University and the unions will soon reach agreement on the issues outstanding between them.

Sincerely,

Marc and Jo

Marc Fisher
Vice Chancellor, Administration

Jo Mackness
Interim Assistant Vice Chancellor, Human Resources

If you are a manager who supervises UC Berkeley employees without email access, please circulate this information to all.

Please do not reply to this message



EXHIBIT D

Strike Information for Employees – March 20, 2019

Negotiations between the University and UPTE (University Professional and Technical Employees) for a new contract covering the Research Support Professional Unit (which includes staff research associates and museum scientists) and the Technical Unit (which includes technicians, editors, lab assistants, scene technicians, business technical and support analysts, animal technicians among others) have concluded without coming to an agreed upon contract. Negotiations between UPTE and the University in the Health Care Professional Unit (which includes counseling psychologists, social workers, pharmacists, laboratory scientists and occupational health technicians) are at impasse. AFSCME (American Federation of State, County and Municipal Employees) which represents employees in the Patient Care Technical Unit (which includes radiologist, medical assistants, pharmacy technicians and opticians) and the Service Unit (which includes custodians, food service workers, bus drivers, grounds workers) remain at impasse.

UPTE and AFSCME have informed the University that the employees in these units will go on strike commencing at 4:00 am, Wednesday, March 20, 2019. Employees who are already working shifts that began before 4:00 am will continue to work through their regularly scheduled hours and will not leave mid-shift. The strike will end at 3:59 am, Thursday, March 21, 2019. Striking employees who were scheduled to work shifts commencing prior to 4:00 am will remain on strike through the end of their shift and will not report to work mid-shift.

Below are answers to some important questions.

If you have additional questions, please contact campus Labor Relations at (510) 643-6001 or labrel@berkeley.edu.

1 - Are the other unions that represent University employees going on strike?

No. The collective bargaining agreements of those unions have “No Strike” articles. In those articles, the unions agree that neither the union nor the employees it represents will engage in strikes, stoppages or interruptions of work, or other concerted activities, including sympathy strikes, which interfere directly or indirectly with University operations. The following bargaining units have contracts with “No Strike” articles that are in effect: Clerical Unit, the Student Health Physicians Unit, the Skilled Crafts Unit, the Non-Senate Instructional Unit, the Registered Nurses Unit, the Police Officer Unit and the Postdoctoral Scholars Unit.

2 - What will happen during the strike?

Employees participating in the strike may not show up for work, join a picket line on campus, pass out informational flyers, and/or participate in other activities organized by the union(s).

3 - Are campus employees expected to come to work on March 20-21, 2019?

Yes. All campus employees are expected to be at work as scheduled and to perform work as assigned. Offices will be kept open, courses will be taught, and the campus will provide normal or equivalent service. If an individual encounters a picket line, the law protects her/his right to cross it. The Berkeley campus has experienced employee strikes in the past. In all cases, picketers have been very committed to their points of view, but also respectful of the views of others.

4 - Will the picketers or striking employees block me from coming to work?

At Berkeley, picketers have always been committed to their position, but also respectful of the rights and views of others. Pickets are lawful so long as they are peaceful, conducted only on public property (i.e., sidewalks), do not block access to the facility, do not interfere with the normal course of business, and do not prohibit non-striking employees from working. Non-striking employees should not invite or engage in any exchanges, which might inflame the situation. If an employee feels they are being harassed or prevented from working by picketers or striking employees, the employee should notify her/his supervisor or campus Labor Relations office at (510) 643-6001 or labrel@berkeley.edu.

5 - If I'm a dues-paying member of the union, am I obligated to participate in the strike? Can I be penalized for not striking?

No employee is under any obligation to strike. Unions are legally prohibited from threatening or coercing members in other ways to keep them from coming to work. However, some unions have the right under their internal union bylaws to levy fines against dues-paying members, but not non-members (those who do not pay dues), who choose to work during a strike, including a sympathy strike. Even if the union does levy fines, the University will not deduct union fines from employees' paychecks. Fines would be handled directly between the union and its members.

6 - What will the University do if employees strike?

If any employee does not report to work as assigned, the University will presume - absent medical certification - that her/his absence from work during a declared strike period is strike-related.

Authorization for an absence from work (e.g., vacation leave) may or may not be granted, depending on operational necessity and without regard to the employee's reason for the requested leave.

Employees who are absent from work without authorization during a strike will not be paid for the absence.

7 - If I come to work, what pay and benefits will I receive?

If you come to work, you will receive the same compensation and benefits as you did before the work stoppage.

8 - If I don't come to work as a result of the strike, will I continue to receive my pay and benefits, and may I use compensatory time or vacation for the time that I am miss?

Employees will not be paid for absences due to participating in a strike. Employees who participate in a strike will not be allowed to use compensatory time or vacation leave to make up for the pay they lose because of striking. Benefits that are based on the percentage of time worked during the pay period may be affected by unauthorized absences.

9 - Am I permitted to talk to my supervisor or unit manager about any of this?

Absolutely. Your manager is another resource for answers and information.

If you have additional questions, please contact campus Labor Relations at labrel@berkeley.edu.

EXHIBIT E

Strike Information for Employees – March 20, 2019

Negotiations between the University and UPTE (University Professional and Technical Employees) for a new contract covering the Research Support Professional Unit (which includes staff research associates and museum scientists) and the Technical Unit (which includes technicians, editors, lab assistants, scene technicians, business technical and support analysts, animal technicians among others) have concluded without coming to an agreed upon contract. Negotiations between UPTE and the University in the Health Care Professional Unit (which includes counseling psychologists, social workers, pharmacists, laboratory scientists and occupational health technicians) are at impasse. AFSCME (American Federation of State, County and Municipal Employees) which represents employees in the Patient Care Technical Unit (which includes radiologist, medical assistants, pharmacy technicians and opticians) and the Service Unit (which includes custodians, food service workers, bus drivers, grounds workers) remain at impasse.

UPTE and AFSCME have informed the University that the employees in these units will go on strike commencing at 4:00 am, Wednesday, March 20, 2019. Employees who are already working shifts that began before 4:00 am will continue to work through their regularly scheduled hours and will not leave mid-shift. The strike will end at 3:59 am, Thursday, March 21, 2019. Striking employees who were scheduled to work shifts commencing prior to 4:00 am will remain on strike through the end of their shift and will not report to work mid-shift.

Below are answers to some important questions.

If you have additional questions, please contact campus Labor Relations at (510) 643-6001 or labrel@berkeley.edu.

1 - Are the other unions that represent University employees going on strike?

No. The collective bargaining agreements of those unions have “No Strike” articles. In those articles, the unions agree that neither the union nor the employees it represents will engage in strikes, stoppages or interruptions of work, or other concerted activities, including sympathy strikes, which interfere directly or indirectly with University operations. The following bargaining units have contracts with “No Strike” articles that are in effect: Clerical Unit, the Student Health Physicians Unit, the Skilled Crafts Unit, the Non-Senate Instructional Unit, the Registered Nurses Unit, the Police Officer Unit and the Postdoctoral Scholars Unit.

2 - What will happen during the strike?

Employees participating in the strike may not show up for work, join a picket line on campus, pass out informational flyers, and/or participate in other activities organized by the union(s).

3 - Are campus employees expected to come to work on March 20-21, 2019?

Yes. All campus employees are expected to be at work as scheduled and to perform work as assigned. Offices will be kept open, courses will be taught, and the campus will provide normal or equivalent service. If an individual encounters a picket line, the law protects her/his right to cross it. The Berkeley campus has experienced employee strikes in the past. In all cases, picketers have been very committed to their points of view, but also respectful of the views of others.

4 - Will the picketers or striking employees block me from coming to work?

At Berkeley, picketers have always been committed to their position, but also respectful of the rights and views of others. Pickets are lawful so long as they are peaceful, conducted only on public property (i.e., sidewalks), do not block access to the facility, do not interfere with the normal course of business, and do not prohibit non-striking employees from working. Non-striking employees should not invite or engage in any exchanges, which might inflame the situation. If an employee feels they are being harassed or prevented from working by picketers or striking employees, the employee should notify her/his supervisor or campus Labor Relations office at (510) 643-6001 or labrel@berkeley.edu.

5 - If I'm a dues-paying member of the union, am I obligated to participate in the strike? Can I be penalized for not striking?

No employee is under any obligation to strike. Unions are legally prohibited from threatening or coercing members in other ways to keep them from coming to work. However, some unions have the right under their internal union bylaws to levy fines against dues-paying members, but not non-members (those who do not pay dues), who choose to work during a strike, including a sympathy strike. Even if the union does levy fines, the University will not deduct union fines from employees' paychecks. Fines would be handled directly between the union and its members.

6 - What will the University do if employees strike?

If any employee does not report to work as assigned, the University will presume - absent medical certification - that her/his absence from work during a declared strike period is strike-related.

Authorization for an absence from work (e.g., vacation leave) may or may not be granted, depending on operational necessity and without regard to the employee's reason for the requested leave.

Employees who are absent from work without authorization during a strike will not be paid for the absence.

7 - If I come to work, what pay and benefits will I receive?

If you come to work, you will receive the same compensation and benefits as you did before the work stoppage.

8 - If I don't come to work as a result of the strike, will I continue to receive my pay and benefits, and may I use compensatory time or vacation for the time that I am miss?

Employees will not be paid for absences due to participating in a strike. Employees who participate in a strike will not be allowed to use compensatory time or vacation leave to make up for the pay they lose because of striking. Benefits that are based on the percentage of time worked during the pay period may be affected by unauthorized absences.

9 - Am I permitted to talk to my supervisor or unit manager about any of this?

Absolutely. Your manager is another resource for answers and information.

If you have additional questions, please contact campus Labor Relations at labrel@berkeley.edu.

EXHIBIT F

You deserve better — you deserve a contract!

On March 8, UC presented AFSCME leaders with another enhanced offer, which **AFSCME refused to let members vote on!** Highlights of UC's offer:

<i>Pay increases</i>	<ul style="list-style-type: none"> • 3% increases for service and patient care employees <u>within 90 days</u> of a contract. • 3% increases for service and patient care employees <u>each year through 2023.</u>
<i>One-time payment</i>	<u>\$2,000</u> for all eligible employees upon contract ratification.
<i>Health Benefits</i>	Quality health benefits at the same rates as other UC employees with similar salaries, <u>plus a \$25 cap</u> for any monthly premium increases for UC's Kaiser and Health Net Blue & Gold plans.
<i>Retirement Benefits</i>	UC offered to give future AFSCME-represented employees a choice between <u>the same pension benefits as current employees</u> and a 401(k)-style plan.
<i>Contracting</i>	Committees at every location that would allow AFSCME to (1) work with UC regarding contracting decisions involving bargaining unit work and (2) give input in advance of decisions.
<i>Professional development</i>	Expanded professional development programs to assist service employees build skills and be eligible for higher-paying jobs.

AFSCME's delays are costing you a lot of money!

AFSCME's strikes and delays are costing you real money. Here is how much average AFSCME-represented employees have been missing in **EACH PAYCHECK** since union leaders rejected UC's 2018 settlement offers:

\$118 <u>each</u> paycheck	Respiratory Therapist
\$109 <u>each</u> paycheck	Building Maintenance Worker
\$108 <u>each</u> paycheck	Radiologic Technologists
\$107 <u>each</u> paycheck	Groundskeeper
\$92 <u>each</u> paycheck	Senior Custodian
\$91 <u>each</u> paycheck	Food Service Worker

You deserve a contract — not another strike!

¡Uds. se merecen algo mejor—Uds. se merecen un contrato!

El 8 de marzo la UC presentó a los dirigentes de la AFSCME otra oferta mejorada, la cual **¡La AFSCME rehusó llevarla a votación de sus miembros!** Puntos principales de la oferta de la UC:

Aumentos de paga	<ul style="list-style-type: none"> • 3% de aumentos para los empleados de servicio y atención técnica al paciente <u>dentro de 90 días</u> de un contrato. • 3% de aumentos para los empleados de servicio y atención técnica al paciente <u>cada año hasta el 2023.</u>
Pago único	<u>\$2,000</u> para todos los empleados que califiquen, al ratificarse el contrato.
Beneficios de salud	Beneficios de salud de calidad con las mismas tasas que aplican a otros empleados de la UC con salarios similares, <u>más un tope de \$25</u> por cualquier aumento de primas mensuales en los planes Kaiser y Health Net Blue & Gold de la UC.
Beneficios de retiro	La UC ofreció dar a los futuros empleados representados por la AFSCME una opción entre <u>los mismos beneficios de pensión que los de los actuales empleados</u> y un plan de tipo 401(k).
Contratación	Comités en cada centro que permitan a la AFSCME (1) colaborar con la UC en cuanto a decisiones de contratación que involucren unidades de negociación de trabajo y (2) informar sobre las decisiones por adelantado.
Desarrollo profesional	Ampliar programas de desarrollo profesional para ayudar a los empleados de servicio a adquirir destrezas y calificar para empleos con mejor paga.

¡Las demoras de la AFSCME están costándoles mucho dinero a Uds.!

Las huelgas y demoras de la AFSCME están costándoles a Uds. dinero contante. He aquí los promedios de cuánto ha dejado de cobrar cada empleado representado por la AFSCME en **CADA CHEQUE DE PAGA** desde que los dirigentes del sindicato rechazaron las ofertas de acuerdo de la UC en el 2018:

\$118 en <u>cada</u> cheque de paga	Terapista Respiratorio
\$109 en <u>cada</u> cheque de paga	Empleado de mantenimiento de edificios
\$108 en <u>cada</u> cheque de paga	Tecnologistas Radiologicos
\$107 en <u>cada</u> cheque de paga	Empleado de mantenimiento de terrenos
\$92 en <u>cada</u> cheque de paga	Custodio sénior
\$91 en <u>cada</u> cheque de paga	Empleado de servicio de alimentos

¡Uds. se merecen un contrato — no otra huelga!

EXHIBIT G

LEONARD | CARDER

REPRESENTING UNIONS, WORKERS, AND BENEFIT PLANS

LEONARD CARDER, LLP
1330 Broadway, Suite 1450
Oakland, CA 94612
Telephone: (510) 272-0169
Fax: (510) 272-0174
www.leonardcarder.com

File No. 553-119

March 11, 2019

VIA ELECTRONIC MAIL

Timothy G. Yeung, Managing Partner
Sloan Sakai Yeung & Wong LLP
555 Capitol Mall, Ste. 600
Sacramento, CA 95814
tyeung@sloansakai.com

Andrew Huntington
University of California
Office of the General Counsel
1111 Franklin Street, 8th Floor
Oakland, CA 94601
andrew.huntington@ucop.edu

Re: Request for Information

Tim, Andy:

We are in receipt of the University's Injunctive Relief request to PERB and it is clear that the University does not come close to meeting its burden of proof sufficient to warrant depriving workers of the right to strike. PERB is required to consider prior experience and to ensure that the employer is exercising due diligence by actually implementing a full array of contingency plans so that workers' rights are properly protected – and not just claiming that it “may” do so. AFSCME and UPTA have long requested information and supporting documentation regarding the University's actual implementation of contingency plans before and during strikes in 2013 and 2014 – when no employees other than those exempted by the unions were subject to any injunction. To date, the University continues to stonewall and has refused to provide the information. By this correspondence, the two unions reiterate their outstanding requests attached to and described in unfair practice charges SF-CE-222H and SF-CE-2230H and information requests dated April 24, 2018, and April 26, 2018, which have already been reiterated in August of 2018. In addition to those outstanding information requests, both unions also further request the following information:

Census Reduction, Diversion, Rescheduling Procedures

1. What *specific* measures did each hospital and medical center *actually* take to reduce patient census before the 3-day strike in May 2018? How much did each medical center reduce the census during the weeks leading up to that that strike?

2. What *specific* measures did each hospital and medical center *actually* take to reduce patient census before the 3 day strike in October 2018? How much did each medical center reduce the census during the weeks leading up to that strike?
3. What was the patient census at each hospital facility 2 weeks before the strike in May 2018 and what was it on the first day of that strike?
4. What was the patient census at each hospital facility 2 weeks before the strike in October 2018 and what was it on the first day of that strike?
5. What was the patient census at each hospital facility on March 20 of 2017?
6. What is the current census at each hospital facility?
7. What specific measures will each hospital and medical center take to reduce patient census before March 20?
8. For each medical center, please indicated whether the University went on “divert” status before or during the AFSCME Service May 7-9 strike and if so, when it did so.
9. For each medical center, please indicated whether the University went on “divert” status before or during the AFSCME Patient Care Technical October 23-25 strike and if so, when it did so.
10. For each medical center, please indicate whether it will go on “divert” status during a one-day strike on March 20, 2018.
11. For each medical center that seeks to have positions enjoined, please provide a copy of the OR schedules showing the procedures scheduled for March 20 and identify which of those will be canceled or rescheduled, and of those that remain, which are elective procedures or cannot be delayed for 24 hours.

Polling Results

12. Without waiving any rights as to the legality or potentially unlawful coercive conduct related to the University’s polling before any strike, please provide a copy of all polling results before the upcoming March 20, 2019 strike showing the number of bargaining unit personnel who affirmatively indicated that they plan to work. Please also provide the same information gathered in advance of the May 2018 and October 2018 strikes, by hospital and classification, and for each hospital and classification, the corresponding numbers of bargaining unit personnel who *did* work during each of those strikes.

Availability of Non-Unit Personnel

13. In each department where workers were enjoined from striking for three days, the number of supervisors, managers, nurses, and other non-bargaining unit employees who worked during the strike, by shift.

As the Unions review the University's papers we may have additional specific questions, but for now:

14. Please name each supervisor or manager who works for UCLA Health and is certified to work in a NICU setting
15. Please name each supervisor or manager who works for UCLA Health and is certified to work in a PICU setting.
16. Please name each RN who works for UCLA Health who is certified to perform respiratory therapy work in the NICU.
17. Please name each RN who works for UCLA Health who is certified to perform respiratory therapy work in the PICU.
18. Please name each supervisor and manager who works in the Pharmacy department of UCLA Health.

Has the University Contacted and Contracted with All Providers of Replacements?

19. For each medical center, all correspondence from UC cancelling requests for staff and/or reducing the number of employees requested after the Superior Court issued the temporary restraining order dated May 4, 2018.
20. For each hospital and medical center, please provide the following information in relation to HealthSource Global ("HSG"):
 - a. A copy of HSG's "Final Fill Reports" for each hospital and UC medical center in relation to the AFSCME Service unit's three day strike in May 2018.
 - b. A copy of HSG's "Final Fill Reports" for each hospital and UC medical center in relation to the AFSCME Patient Care Technical unit's three day strike in October 2018.
 - c. A copy of the University's and each medical center's currently pending "orders" or requests to HSG for people to fill positions that the University is also seeking to have enjoined.

- d. Immediately upon issuance or receipt, please provide a copy of all written and electronic correspondence with HSG that relates to HSG's ability to supply the university with striker replacements in positions that the University seeks to have enjoined, including all attachments. This should include but not be limited to documents reflecting the number of positions initially requested by the University, by classification; all subsequent amendments to those request(s); HSG's various updates as to the number of people it can provide and the number it considers to be in the pipeline.
21. For each hospital and medical center, please provide the following information in relation to any registry, local agency or national striker replacement company (hereafter referred to as "provider"). As a matter of convenience, AFSCME and UPTE provided a non-exhaustive list of such providers at pages 9-10 of the Preparata Declaration in ROA 16, Ross Decl. H, UE Vol. D, and attached here for ease of reference. We would expect to see the University's efforts to obtain replacement employees from all of those providers as well as other companies known to the University.
- a. A copy of the University's contract(s) with each such provider in 2019.
 - b. For each provider: how many striker replacements did the University request for each hospital and medical center, by classification, and how many did HSG provide in advance of May 9, 2018, by hospital and classification?
 - c. A copy of each written or electronic request for striker replacements along with all subsequent correspondence between the provider and the University.
 - d. Immediately upon issuance or receipt, for each provider: all correspondence and reports indicating the number of positions, by classification, requested for each hospital and/or medical center, and the number of positions that the provider is working to fill, has identified potential replacement workers or has obtained commitments to fill.
 - e. A copy of each provider's final "fill" reports (or their functional equivalent) for each hospital and UC medical center in relation to the AFSCME Service unit's three-day strike in May 2018.
 - f. A copy of each provider's final "fill" reports (or their functional equivalent) for each hospital and UC medical center in relation to the AFSCME Patient Care Technical unit's three-day strike in October 2018.

Alternative Arrangements

22. For each medical center, in relation to each position that the University seeks to enjoin from striking, please indicate whether the University contacted the UPTE or AFSCME Patient Protection Task Force in May or October of 2018 to request that a represented employee in that classification to cross the picket line and if so, the basis for that request and the union's response.

The Unions are entitled to this information under HEERA and the Public Records Act. Moreover, time is of the essence as the University did not include the above-identified information in its requests for injunctive relief which seeks to deprive represented employees' of their right to strike on March 20, 2019. For this reason, this information request is also copied to PERB.

Sincerely,

LEONARD CARDER, LLP



Kate Hallward

*Counsel to AFSCME Local 3299 and UPTE-CWA
Local 9119*

cc: Felix De la Torre, Laura Davis, Daniel Trump,
General Counsel's Office, PERB (*via email only*)

as shown in the exclusive contract attached as Exhibit A to Exhibit 16 of this declaration.

24. I have reviewed pages 7-9 of PERB's reply brief filed in support of PERB's request for a TRO dated May 10, 2013, which summarizes the evidence relating to UC's use of HealthSource Global's replacement workers. During the 2013-14 strikes, four out of UC's five medical centers hired significant numbers of replacement workers from HealthSource Global. In contrast, UCLA Medical Center chose to hire only a small handful of workers workers from HealthSource Global in 2013-2014 - and even then, did so after telling PERB that it had no plans to use HealthSource Global at all. While HealthSource is one option barely tapped by UCLA, there are also numerous other national striker replacement companies that were untapped at all, by any UC hospital.

25. I conducted an internet search for companies that provide striker replacement workers for employers in the medical industry. While I did not exhaust the universe of all such companies, the following is a partial listing of the *national* striker replacement companies - other than HealthSource Global - that the University could use to supply hospital staff in the event of a strike:

American Travel	https://www.americantraveler.com/nursing-specialties/surgical-tech	800-884-8788
Axis Medical Staffing	www.alliedmedicalstaffing.com	888.299.AXIS (2947)
Core Medical Group	www.coremedicalgroup.com	1-800-995-2673
Cross County Allied	https://www.crosscountryallied.com/job-search-results?what=&where=California	800-223-9230
Fastaff Travel Nursing	https://www.fastaff.com/view-travel-nurse-jobs-specialty	800-736-8773
Flexcare Medical Staffing	https://allied.flexcarestaff.com/	(916) 727-6700
Fusion	https://www.fusionmedstaff.com/traveler/	877-230-3885 and 402-505-9753
Host Healthcare	https://www.hosthealthcare.com/search-jobs/	844.812.8093
Huffmaster	https://applicants.huffmaster.com/allied-positions/overview/	1-866-903-7267
Jackson Nurse Professionals	http://www.jacksonnursing.com/	888-300-5132

Liquid Agents Healthcare	https://www.liquidagents.com/job-board/	1-888-301-9333
Maxim Healthcare Services	www.maximhealthcare.com	410-910-1500
Med Staff Healthcare Solutions	www.medstaffinc.com	800-200-9855
Modern Industrial Services Inc	http://www.modernindustrialservices.com/medical.asp	1-800-834-1720
Modern Staffing and Security	http://www.modernstaffingandsecurity.com/staffing.html	(800) 641-1220
Quest Staffing Group	www.questgroupstaffing.com	866-818-8843
RadWorking	https://www.radworking.com/allied-health-jobs/496242.html	877-723-7823
Star Nursing Inc	starnursing.com	877-687-7399
Tale Med	www.talemed.com	1800-494-0087
Total Med	www.totalmed.com	866-288-8001
Triage Staffing	www.triagestaff.com/jobs	800-259-9897

26. In addition, regional Registries, third party staffing companies that provide temporary clinical staff, could provide each UC Medical Center with technical employees in the event of a strike. I researched such registries online and a partial listing, resulting from my search, follows:

<u>Region</u>	<u>Registry/Clinical Staffing Agency</u>	<u>Website</u>	<u>Phone Number</u>
Northern California	Advantage On Call	http://www.advantageoncall.com/contact/	916-256-3854
Bay Area	Medical Staffing Network	https://www.msnhealth.com/	866.395.8002 and 877.541.4387
	Maxim Healthcare Services	https://www.maximhealthcare.com/our-services/healthcare-staffing-and-services/allied-health	510.597.9111
	Power Personnel Inc.	http://www.powerpersonnel.com	P: 1(800)-778-0711 or (408)-283-9144
	United Healthcare Staffing	http://www.uhcstaffing.com	P: (408)-441-9200

Los Angeles	Medical Staffing Network	https://www.msnhealth.com/	888.627.4346
	Maxim Healthcare Services	https://www.maximhealthcare.com/our-services/healthcare-staffing-and-services/allied-health	323.937.1122
Orange County	ATC HealthCare Staffing Services	http://atchealthcareoc.com/	(714) 535-0133 and 888.930.1423
	Orange County		
	Maxim Healthcare Services	https://www.maximhealthcare.com/our-services/healthcare-staffing-and-services/allied-health	949.770.4994
	Advantage On Call	http://www.advantageoncall.com/contact/	888-748-3711
San Diego	Medical Staffing Network	https://www.msnhealth.com/	619.362.9736
	Advantage On Call	http://www.advantageoncall.com/contact/	619-430-4787

UC's CONTINGENCY PLANS DURING PRIOR STRIKES

27. In 2005, there was a threatened strike by the California Nurses Association (CNA) at the five University of California (UC) medical centers. I have reviewed the documents produced by UC pursuant to subpoena and/or introduced into evidence in front of PERB and in Superior Court and the Court of Appeals in a variety of legal proceedings pertaining to that threatened strike. Based on that research, I have learned of the facts in this declaration. Moreover, Exhibits 17-22 to this declaration were documents that I reviewed from the aforementioned strike litigation

28. The 2005 threatened strike by CNA against UC never took place. Rather, it was fully enjoined. [PERB found that it was pre-impasse and not related to any legitimate unfair labor practice charge. *Regents of the University of California* (2010) PERB Decision No. 2094, at 32-33]. The strike was enjoined at the 11th hour, after all five UC medical centers had already implemented the measures that would dictate how and to what extent they would operate during the length of the strike.

///

EXHIBIT H

Andrew Ziaja

From: Kate Hallward
Sent: Wednesday, March 20, 2019 16:31
To: Tim Yeung
Cc: Claudia Preparata (cpreparata@afscme3299.org); Andrew Huntington (Andrew.Huntington@ucop.edu)
Subject: RE: UPTE and AFSCME's request for information related to UC's IR Request

Tim,

We never heard from UC on this - once again, the unions reiterate their request for all the information requested in the letter of March 11 and the various attachments to the Sixth Hallward Declaration filed with PERB and served on UC.

Thanks,

Kate

-----Original Message-----

From: Tim Yeung [mailto:tyeung@sloansakai.com]
Sent: Monday, March 11, 2019 9:42 PM
To: Kate Hallward <khallward@leonardcarder.com>; Andrew Huntington (Andrew.Huntington@ucop.edu) <Andrew.Huntington@ucop.edu>; Felix DeLaTorre <FDeLaTorre@perb.ca.gov>; Laura Davis (LDavis@perb.ca.gov) <LDavis@perb.ca.gov>; Daniel Trump <DTrump@perb.ca.gov>
Cc: Paul Schwartz <pschwartz@leonardcarder.com>; Julia Lum <jlum@leonardcarder.com>; UC Strike Team <UCStrikeTeam@sloansakai.com>
Subject: RE: UPTE and AFSCME's request for information related to UC's IR Request

Kate,
I'll give you a call tomorrow to meet and confer over this. The request is extensive and my team and UC personnel could easily spend the entire week working on just this request. I'll note that the positions granted by PERB and the Court - which were far fewer than what UC needs - were all positions for which PERB and the Court agreed that replacements were unavailable or inadequate (eg unfamiliarity with equipment). Given that I'm not sure of the relevance of many of these requests. But let's chat tomorrow...Tim.

Timothy G. Yeung
d: 916-258-8803 | tyeung@sloansakai.com

-----Original Message-----

From: Kate Hallward <khallward@leonardcarder.com>
Sent: Monday, March 11, 2019 9:15 PM
To: Tim Yeung <tyeung@sloansakai.com>; Andrew Huntington (Andrew.Huntington@ucop.edu) <Andrew.Huntington@ucop.edu>; Felix DeLaTorre <FDeLaTorre@perb.ca.gov>; Laura Davis (LDavis@perb.ca.gov) <LDavis@perb.ca.gov>; Daniel Trump <DTrump@perb.ca.gov>
Cc: Paul Schwartz <pschwartz@leonardcarder.com>; Julia Lum <jlum@leonardcarder.com>
Subject: UPTE and AFSCME's request for information related to UC's IR Request

Tim, Andy:

Please see the attached correspondence and given the University's recently-filed IR request, we ask that you provide the responsive information to the Unions and also to PERB.

Thank you,

Kate

EXHIBIT I

PUBLIC EMPLOYMENT RELATIONS BOARD

San Francisco Regional Office
1330 Broadway, Suite 1532
Oakland, CA 94612-2514
Telephone: (510) 622-1025
Fax: (510) 622-1027



May 1, 2018

Tim Yeung, Attorney
Sloan Sakai Yeung & Wong LLP
1220 Seventh Street, Suite 300
Berkeley, CA 94710

Andrew Ziaja, Attorney
Leonard Carder LLP
1330 Broadway, Suite 1450
Oakland, CA 94612

Re: *American Federation of State, County & Municipal Employees Local 3299 v. Regents
of the University of California*
Unfair Practice Charge No. SF-CE-1183-H

Dear Parties:

The Office of the General Counsel has issued the enclosed COMPLAINT in the above-entitled matter. The Respondent is required to file an **ANSWER** within twenty (20) calendar days from the date of service of the COMPLAINT, pursuant to PERB Regulation 32644.¹ The required contents of the **ANSWER** are described in PERB Regulation 32644(b). If you have not filed a Notice of Appearance form, one should be completed and returned with your **ANSWER**.

An informal settlement conference will be scheduled shortly. Please direct all inquiries, filings and correspondence to the undersigned.

Sincerely,

Daniel M. Trump
Senior Regional Attorney

Enclosure

¹ PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq. The text of PERB's Regulations may be found at www.perb.ca.gov.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD



AMERICAN FEDERATION OF STATE,
COUNTY & MUNICIPAL EMPLOYEES LOCAL
3299,

Charging Party,

v.

REGENTS OF THE UNIVERSITY OF
CALIFORNIA,

Respondent.

Case No. SF-CE-1183-H

COMPLAINT

It having been charged by Charging Party that Respondent engaged in unfair practices in violation of California Government Code section 3571, the General Counsel of the Public Employment Relations Board (PERB), pursuant to California Government Code sections 3563(h) and 3563.2 and California Code of Regulations, title 8, section 32640, issues this COMPLAINT on behalf of PERB and ALLEGES:

1. Charging Party is an exclusive representative within the meaning of Government Code section 3562(i) of an appropriate unit of employees.
2. Respondent is an employer within the meaning of Government Code section 3562(g).
3. On or about August 9, 2017, Charging Party requested the following information that is relevant and necessary to Charging Party's discharge of its duty to represent employees:

Any and all contingency plans, and/or documents reflecting or relating to contingency plans, created at any time between January 1, 2012 and the present, that the Regents of the University of California (UC) have made pertaining to a strike or work stoppage at any UC facility.

A copy of any and all agreements currently in effect between the University and any entity that offers to supply replacement workers in the event of a strike.

All inquiries, orders, emails or requests, as well as any answers to inquiries, orders, e-mails or requests, pertaining to temporary or replacement employees for any classifications in the EX or SX bargaining units made to any registry, provider of temporary labor, or strike staffing agency, or other outside staffing agency of any kind in anticipation of any potential strike by AFSCME in 2013 or 2014.

All inquiries, orders, emails or requests, as well as any answers to inquiries, orders, e-mails or requests, pertaining to temporary employees for any classifications in the EX bargaining unit made to any registry, provider of temporary labor or outside staffing agency of any kind since January 1, 2012.

Records of all deposits or payments, at any time since January 1, 2012, paid to any strike replacement agency.

For any AFSCME-represented job classification or title that you claim should be wholly or partially prohibited from striking in order to allegedly protect the public from alleged imminent and substantial threats to the public health and safety, please provide records and information showing the minimum staffing in that classification/title (at each and every medical center where you claim that employees in that job classification or title should be wholly or partially prohibited from striking), on the following shifts:

- (a) regular weekdays according to current schedules,
- (b) weekends according to current schedules,
- (c) Thanksgiving Day 2016,
- (d) Christmas Day 2016, and
- (e) New Year's Day 2017.

For any AFSCME-represented job classification or title that you claim should be wholly or partially prohibited from striking in order to allegedly protect the public from alleged imminent and substantial threats to the public health and safety, please provide records and information showing (for each_ medical center where you claim that employees in that job classification or title should be wholly or partially prohibited from striking), the full names and titles of all University employees not represented by AFSCME who could partially or fully fill in for employees in EX classifications or titles that you claim should be wholly or partially prohibited from striking. Please include personnel not represented by AFSCME who may work at ambulatory clinics or other locations within the medical center enterprise, irrespective of whether or not the University believes that those other locations should remain open during a strike.

A complete list of any and all AFSCME-represented job classifications or titles that you claim should be wholly or partially prohibited from participating in a strike in order to allegedly protect the public from alleged imminent and substantial threats to the public health and safety, together with:

- (a) the number of employees in that classification or job title that you believe should be prohibited from striking for each shift during a strike,
- (b) the specific work areas where you believe these employees should be required to work during a strike and
- (c) an explanation of the extent to which your claimed need for these employees to be prohibited from striking can be mitigated or reduced via each of the following measures:
 - (i) reduction in patient census, diversion of patients, transfer of patients, postponement of care, and closure of certain operations,
 - (ii) performance of certain functions before and/or after a strike,
 - (iii) use of supervisory, managerial, administrative and other non-AFSCME-represented staff to fill in during a strike,
 - (iv) use of nurses (including registry nurses), doctors, fellows, residents or medical students to perform certain functions,
 - (v) use of registries, temporary agencies and travelers,
 - (vi) use of staff recruited by striker replacement companies,
 - (vii) use of overtime by any or all of the types of employees mentioned in this request, and
 - (viii) use of outside companies such as outside laboratories.

All records (including but not limited to invoices, billing statements, statements of account, remittance documents, internal expense tracking records and related correspondence) indicating or otherwise reflecting expenses incurred by the Regents of the University of California or any hospital, medical center or medical clinic operated by the University of California, including the UCLA Health System, UCSF Medical Center, UC Davis Medical Center, UC Irvine Healthcare and/or the UC San Diego Health System(hereinafter, collectively referred to as "the University") as a result of actual or threatened strike activity at any time in 2013 or 2014.

All records indicating or otherwise reflecting potential revenues to the University that were lost or delayed as a result of actual or threatened strike activity at any time in 2013 or 2014.

All records indicating or otherwise reflecting monetary savings by the University, including but not limited to reductions in compensation costs for University employees, as a result of strike activity occurring at any time in 2013.

All records, including but not limited to internal expense tracking records, indicating or otherwise reflecting payments to employees for overtime hours worked as a result of strike activity occurring at any time in 2013.

All records (including but not limited to invoices, billing statements, statements of account, remittance documents and related correspondence) indicating amounts billed to and/or paid by the University to outside law firms for legal services rendered since January 1, 2013, pertaining to anticipated or actual legal

proceedings pertaining to strike activity by AFSCME Local 3299, UPTE-CWA Local 9119 or the California Nurses Association.

All records reflecting orders or requests by the University for temporary labor or temporary employees of any kind in anticipation of or as a result of actual or threatened strike activity at any time in 2013 or 2014.

All written correspondence of any kind, including electronic correspondence, between the University and any provider of temporary labor or temporary employees of any kind, written in anticipation of or as a result of actual or threatened strike activity at any time in 2013 or 2014.

All records reflecting University plans for operation, partial operation, closure or partial closure of University hospitals and/or medical clinics during actual or threatened strike activity at any time in 2013 or 2014;

All records reflecting the University's instructions to its supervisors and/or managers to inquire as to whether employees would be at work during actual or threatened strike activity at any time in 2013 or 2014.

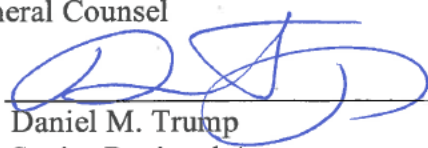
4. On or about October 9, 2017, Charging Party reiterated its request for the information described in paragraph 3.
5. On or about January 26, 2018, Respondent refused to provide Charging Party with the information described in paragraph 3.
6. By the conduct described in paragraph 5, Respondent failed and refused to meet and confer in good faith with Charging Party in violation of Government Code section 3571(c).
7. This conduct also interfered with the rights of bargaining unit employees to be represented by Charging Party in violation of Government Code section 3571(a).

Any amendment to the complaint shall be processed pursuant to California Code of Regulations, title 8, sections 32647 and 32648.

DATED: May 1, 2018

J. FELIX DE LA TORRE
General Counsel

By


Daniel M. Trump
Senior Regional Attorney

PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Alameda, California. I am over the age of 18 years and not a party to the within entitled cause. The name and address of my residence or business is Public Employment Relations Board, 1330 Broadway, Suite 1532, Oakland, CA 94612-2514.

On May 1, 2018, I served the Letter regarding Case No. SF-CE-1183-H on the parties listed below by

X placing a true copy thereof enclosed in a sealed envelope for collection and delivery by the United States Postal Service or private delivery service following ordinary business practices with postage or other costs prepaid.

___ personal delivery.

___ facsimile transmission in accordance with the requirements of PERB Regulations 32090 and 32135(d).

___ electronic service (e-mail).

Tim Yeung, Attorney
Sloan Sakai Yeung & Wong LLP
1220 Seventh Street, Suite 300
Berkeley, CA 94710

Andrew Ziaja, Attorney
Leonard Carder LLP
1330 Broadway, Suite 1450
Oakland, CA 94612

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on May 1, 2018, at Oakland, California.

M. Gonsalves
(Type or print name)

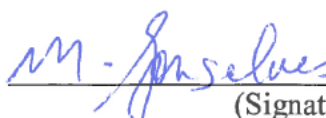

(Signature)

EXHIBIT J

----- Original Message -----

Subject: [Hrd] Staff Spring Break! -- Wednesday, March 20th -- ARC Pool Deck

Date: 2019-03-11 10:24

From: [REDACTED]

To: "hrd@uci.edu" <hrd@uci.edu>

GET READY FOR SPRING BREAK!! * SEE YOU ON THE POOL DECK!

[REDACTED]

Director of Housing Administrative Services

University of California, Irvine

G458 Student Center

[REDACTED]

List-Info: <https://maillists.uci.edu/mailman/listinfo/hrd>